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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 182.

ELISHA HYATT, HIRAM HYATT, JARED W. LEVINGS, AND ALBERT W. WHITTER, COMPOSING THE BANKING FIRM OF HYATT, LEVINGS, & CO., WILLIAM HELFENSTEIN, JOHN J. McLAUGHLIN, AND HOWARD TRUEDLY, PARTNERS AS WILLIAM HELFENSTEIN & CO., AND JAMES W. SHOUSE, SHERIFF OF KNOX COUNTY, INDIANA, APPELLANTS,

vs.

THE VINCENNES NATIONAL BANK OF VINCENNES, INDIANA, AND THE WASHINGTON NATIONAL BANK OF WASHINGTON, INDIANA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED JANUARY 31, 1882.

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INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	1	1
Exhibit A—Sheriff's certificate of sale, July 2, 1877	14	7
Motion for restraining order	20	10
Restraining order	20	10
Amendment and supplement to bill	21	10
Motion for restraining order, &c.	25	12
Restraining order	26	13
Answer of Helpenstine *et al.*	26	13
Shouse	32	16
Hyatt *et al.*	34	17
Replication	40	20
Caveat	41	20
Decree	42	20
Motion to modify decree	48	24

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	Original.	Print.
Order overruling motion to modify decree	48	24
Order granting appeal	48	24
Bond	50	24
Agreement and evidence	52	25
Diagram	53½	26
Stipulation as to evidence	53½	26
Deed of S. A. Bunting *et al.* to Wm. Helpinstine & Co., July 15, 1874	53¾	26
Wm. Simonson to Wm. Helpinstine & Co., July 2, 1874	55	27
Sam'l W. Stinkard to Wm. Helpinstine, March 31, 1875	57	28
Josiah Phillippi to Wm. Helpinstine, March 18, 1875	59	28
Mary Atkinson to Wm. Helpin tine, March 30, 1875	60	30
Austin Neal to Wm. Helpinstine, March 30, 1875	62	31
Contract between Samuel A. Bunting *et al.* and Wm. Helpinstine & Co., July 20, 1874, &c.	63	32
Execution and return	69	35
Certificate of judge to evidence	80	40
Petition for appeal	81	41
Allowance of appeal	89	43
Bond	91	43
Citation	93	44
Acknowledgment of service	94	45
Certificate to record	95	45

1 Pleas of the circuit court of the United States for the district of Indiana, begun and holden at the United States court-house, in the city of Indianapolis, in said district, on the first Tuesday of May, in the year of our Lord one thousand eight hundred and eighty, before the Honorable Walter Q. Gresham, judge of the district court of the United States for the the district of Indiana, and *ex officio* judge of the circuit court.

THE VINCENNES NATIONAL BANK *et al.*
vs.
WILLIAM HELPHINSTINE *et al.* } No. 5751. Chancery.

Be it remembered that heretofore, to wit, at the November term of the circuit court of the United States for the district of Indiana, on the 25th day of December, 1877, before the Honorable Walter Q. Gresham, one of the judges of said circuit court, the following proceedings in the above-entitled cause were had, to wit:

Come now the said complainants by their solicitors and file their bill of complaint, verified by the affidavit of Frederick W. Viehe, which bill and affidavit are in the words and figures following, to wit:

To the judges of the circuit court of the United States for said district:

2 The Vincennes National Bank, a corporation organized and subsisting under the national bank act, located in the city of Vincennes, in the county of Knox, in the State of Indiana, and the Washington National Bank, a corporation organized and subsisting under said national bank act, located in the city of Washington, in the county of Daviess, in said State, both citizens of said State, bring this their bill against William Helphinstine, Howard A. Truedley, John J. McLaughlin, Elisha Hyatt, Hiram Hyatt, Albert M. Whitten, and Jared W. Levings, all of said city of Washington, and citizens of said State of Indiana.

And thereupon your orators complain and say: That said Helphinstine, Truedley, and McLaughlin were, up to about the time of sale on execution hereinafter mentioned, partners in the business of mining coal, under the firm name of Wm. Helphinstine & Co., and that said Elisha Hyatt, Hiram Hyatt, Whitten, and Levings were and are partners in the business of banking, under the firm name of Hyatt, Levings & Co.

That heretofore, to wit, on the 7th day of March, 1876, by the judgment and consideration of the Daviess circuit court of said State, it then and there having full jurisdiction in the premises, said Vincennes National Bank recovered against said William Helphinstine, John J. McLaughlin, and Howard A. Truedly, the sum of five thousand and seventy-five dollars ($5,075.00.)

That heretofore, to wit, on the 7th day of March, 1876, by the judgment and consideration of said Daviess circuit court, it then and there having full jurisdiction in the premises, said Vin-
3 cennes National Bank recovered against said William Hel-

phinstine and one Francis P. McDonald and one William Tranter the sum ——.

That heretofore, to wit, on the 7th day of March, 1876, by the judgment and consideration of said Daviess circuit court, it then and there having full jurisdiction in the premises, said Washington National Bank recovered against said William Helphenstine, John J. McLaughlin, and Howard A. Truedley the sum of five thousand and seventy-eight dollars ($5,078\frac{00}{100}$).

That heretofore, to wit, on the 7th day of March, 1876, by the judgment and consideration of said Daviess circuit court, it then and there having full jurisdiction in the premises, said Washington National Bank recovered against said William Helphinstine, Francis P. McDonald, and William Tranter the sum of ——.

That heretofore, to wit, on the 7th day of March, 1876, by the judgment and consideration of said Daviess circuit court, it then and there having full jurisdiction in the premises, said Elisha Hyatt, Hiram Hyatt, Albert W. Whitten, and Jared W. Levings recovered against said William Helphinstine and John J. McLaughlin the sum of ——.

That afterwards execution was duly issued to the sheriff of Knox county, Indiana, out of the clerk's office of said Daviess circuit court, upon each of said judgments respectively, and placed in the hands of said sheriff to be executed according to law.

4 That at the date of the rendition of said judgments, and continuously on until the date of the sale hereinafter mentioned, said William Helphinstine, John J. McLaughlin, and Howard A. Truedley, as such partners, were the owners of the following described real estate and the following leasehold property:

That the legal title to some portions thereof was vested in them all as such partners, and of the remainder thereof in the several individual members of said firm for its use.

Your orators do not know, and are therefore unable at this time to state particularly, in which of the several members of said firm of William Helphinstine & Co. the legal title to the several portions of said real estate and leasehold title was vested.

Said real estate and leasehold property is situate in said county of Knox, and State of Indiana, and is described as follows, to wit:

A strip of ground with a railroad track thereon leading from the Indianapolis & Vincennes railroad at Bicknell to the coal mine of William Helphinstine & Co., the same being in sections 16, 21, and 22, in township four (4) north, of range eight (8) west, the centre line of said railroad track is as follows: Beginning on the south line of section 22, 23 feet east of the corner of sections 21, 22, 27, and 28, thence curving to the left in a northwesterly direction, with a radius of 1,250 feet, a distance 255 feet to a stake on the west line of section 22, 250 feet north of the southwest corner of section 22; thence continuing to curve as afore-

5 said a distance of 345 feet to the tangent point of said line; thence north 27¼ degrees west 2,290 feet to the north line of the southwest quarter of section 21, 141 feet east of the southeast corner of the southwest quarter of the northeast quarter of said sec-

tion; thence continuing on the same course 310 feet to a point on the east line of the southwest quarter of the northeast quarter of section 21, 275 feet north of the southeast corner of said quarter of a quarter; thence continuing on the same course 1,223 feet to the north line of said southwest quarter of the northeast quarter of section 21, 562 feet west of the northeast corner; thence on the same course 822 feet; thence curving to the right, with a radius of 955 feet, a distance of 655 feet to the north line of section 21, 311 feet east of the northwest corner of said quarter section; thence curving to the right, with a radius of 955 feet, a distance of 400 feet to the Indianapolis and Vincennes railroad. The said strip of ground is forty (40) feet in width, being twenty (20) feet on each side of said centre line through the southwest quarter of the southwest quarter of section 22, the southeast quarter of section 21, and in section 16, and thirty (30) feet in width, being fifteen (15) feet on each side of said centre line through the southeast quarter of the northeast quarter, the southwest quarter of the northeast quarter, and the northwest quarter of the northeast quarter of section 21.

6 Also the estate, rights, title, and interest of the defendants, William Helphinstine, Howard A. Truedley, and John J. McLaughlin, and each of them, being the residue of terms of years unexpired which they have under certain mining leases in and to real estate in said county of Knox, to wit: The south half of southeast quarter of section 16, west half of northwest quarter of section 16, west half of southwest quarter of section 16, southwest quarter of southeast quarter of section 17, southeast quarter of southwest quarter of section 17, northeast quarter of section 20, south half of southwest quarter of section 21, south half of southeast quarter of section 21, northeast quarter of southeast quarter of section 21. Lots Nos. 1 and 2, being the northwest fractional quarter of section 28, the west half of northeast quarter of section 28, southeast quarter of northeast quarter of section 28. Lots Nos. 1 and 2, being the west half of the southeast quarter of section 22. Lots 1, 2, and 3 of fractional section 27. Lots Nos. 3 and 4 of fractional section 28. The northeast quarter of northeast quarter of section 28, excepting therefrom ten (10) acres conveyed March 20th, 1871, by John H. Phillippi and wife to James S. Little, said ten acres being in the northeast corner of said tract, all in township four (4) north, of range eight west. Seventy-five acres in the north corner of donation lot No. 154, one hundred and twenty (120) acres. Part of donation No. 241, beginning at a stone set $23\frac{55}{100}$ chains from the west corner of said donation on a course of south $38\frac{3}{4}$ degrees east; thence

7 south $38\frac{3}{4}$ degrees east 31 poles to a stone; thence north $53\frac{1}{2}$ degrees east 148 poles to a stake; thence north $38\frac{3}{4}$ degrees west 148 poles; thence south $51\frac{1}{4}$ degrees west $91\frac{1}{2}$ poles from the west corner of said lot on a course of north $51\frac{1}{4}$ degrees east from said west corner; thence south $38\frac{3}{4}$ degrees east 72 poles; thence south $51\frac{1}{4}$ degrees east $91\frac{1}{2}$ poles to the beginning, estimated to contain 120 acres.

Part of donation No. 151, beginning at the north corner of said donation; thence south $38\frac{3}{4}$ degrees east 50 chains to the east corner

of said donation; thence south 51¼ degrees west 20 chains; thence north 38¾ degrees west 50 chains; thence north 51¼ degrees east 20 chains, to the beginning, containing 100 acres.

One hundred and twenty (120) acres in the south corner of donation No. 241. Donation No. 147, containing 400 acres. Part of lot No. 3 of fractional section 18, township 4 north, range eight west, beginning on the east line of donation No. 147, at the south corner of lot No. 3; thence north 38¾ degrees west 104 poles; thence east 34 poles; thence south 25 degrees east 86 poles to beginning, containing ten (10) acres. Part of donation No. 148, beginning at the east corner of said donation; thence north 38¾ degrees west 50 chains to the north corner; thence south 51¼ degrees west 80 chains to the west corner of said donation; thence south 38¾ degrees east $42\frac{15}{100}$ chains to a point set seven (7) chains and 82½ links north 38¾ degrees west from the south corner of said donation; thence north 51¼ degrees east $29\frac{88}{100}$ chains; thence north 38¾ degrees west $2\frac{15}{100}$ chains; thence north 51¼ degrees east $19\frac{38}{100}$ chains; thence south 38¾ de-
8 grees east ten (10) chains to the donation line; thence north 51¼ degrees east $30\frac{34}{100}$ chains to the beginning, estimated to contain $357\frac{34}{100}$ acres.

Donation No. 149, except 100 acres thereof, bounded as follows: Beginning at the west corner of said donation, thence north 51¼ degrees, east $41\frac{13}{100}$ chains, thence south 38¾ degrees east $17\frac{75}{100}$ chains, to the centre of Edwardsport road, thence south 38¼ degrees west 8 chains, thence south 82 degrees west $7\frac{52}{100}$ chains, to the centre of Edwardsport road, thence south 13 degrees, east $11\frac{82}{100}$ chains, thence south 51¼ degrees west $22\frac{32}{100}$ chains, to the centre of the Apraw road, thence north 38¾ degrees west 27 chains, to beginning. Donations Nos. 153, 154, and 155, and 100 acres in the south corner of donation 244.

On said land and leasehold was situate and sold, as aforesaid, to your orators one engine and boiler, and hoisting apparatus, steam-pump, Fairbank railroad scales, one wagon scales, 4 coal screens, one blacksmith shop, one office building, one engine building and dump-house, one stable, one lime-house, two dwelling-houses, track in coal mine, also railroad track, switches, and all fixtures belonging to the coal mine and leasehold.

That afterwards, to wit, on the 9th day of June, 1877, said sheriff of Knox county, having given due notice of the time and place of sale, as prescribed by law, at the court-house door of said county of Knox, did, by virtue of said judgments and executions thereon, offer for sale at public auction all said real estate and leasehold property as an entirety, the same not being susceptible of
9 division without injury. And at said sale your orators bid for all said property and rights the sum of nine thousand seven hundred and ninety-five dollars ($9,795.00), and that being the highest and best bid therefor, the same was then and there publicly struck off and sold to your orators jointly. And thereupon, and upon payment of said sum, pursuant to the statute of the State of Indiana in such case made and provided, said sheriff executed

and delivered to your orators a certificate of said purchase, a copy of which is filed herewith, as part hereof, marked Exhibit "A."

Your orators show that said land and leasehold interest are especially valuable for the purpose of coal mining, and for that purpose only. That it contains a valuable vein of bituminous coal, to which a shaft has been sunk, through which the coal is brought to the surface for market. That the railroad aforesaid is essential to said mine, connecting it with the Indianapolis and Vincennes railroad, and is the only available medium for removing the coal from the mine to the various cities and places where it is sold in the market; and that without said railroad said property is comparatively valueless. Said railroad is about one and a half miles long.

And your orators show that on the night of Saturday and Sunday last, viz., on the 22nd and 23rd of December, 1877, said William Helphinstine, with a large force of laborers, to wit, twenty-five or thirty men, did secretly and stealthily, and without any right or authority of law, take up and remove the iron rails compos-
10 ing about one mile in length of the middle portion of said railroad appertaining to said mine. That long prior thereto, and prior to the rendition of said judgments, said rails had been permanently laid and fastened by spikes to cross-ties embedded in the ground in the usual manner in which the rails of railways are laid.

Your orators charge that the purpose of said Helphinstine in thus tearing up said iron rails and removing them was either to sell and dispose of the same for his own benefit, or to the end that the same may be applied to the satisfaction of the execution upon said judgment of Hyatt, Levings & Co., which remains partly unpaid, as well as another execution in their favor, as the personal property of said Helphinstine.

Your orators are not intelligibly advised as to what the intrinsic value of said property so purchased by them is. But they say that by said national bank act they will not be allowed to hold the same for a period of over five years.

That the same cannot, as they fear and believe, be sold within that time for a sum sufficient to satisfy said first judgments in favor of your orators respectively, even if said railroad shall be replaced, but that without said railroad said property is wholly inadequate to the satisfaction of said judgments. That without said railway the mine cannot be operated, since its product cannot be removed.

Your orators say that the said judgment defendants, William Helphinstine & Co., are wholly insolvent, both as a firm and individu-
ally, and that they are and will be unable to redeem said
11 property, as permitted by the statute of the State of Indiana, within the year allowed for that purpose. And the wrongful act and trespass of said Helphinstine in removing said iron rails manifest the fact that they do not intend to make any effort to redeem.

Your orators show that said rails are not as yet carried away, but are as yet left lying along the line of said strip of land upon which said railway, before its destruction, was located. But upon informa-

tion and belief they charge that said Helphinstine and said Hyatt, Levings & Co. have fraudulently combined together to deprive your orator of their right there acquired by them under their said purchase, and to apply the same toward the satisfaction of said claims of Hyatt, Levings & Co., and that to that end said Helphinstine has made a pretended and fraudulent sale of the same to said Hyatt, Levings & Co., and that unless restrained by the order of your honors said iron rails will be removed by said Helphinstine and said Hyatt, Levings & Co., or some of them, so that your orators will be unable to obtain the possession of the same by the time when they shall become entitled to a sheriff's deed, under their said purchase, to the irreparable injury of your orators. That said rails are of the value of at least two thousand dollars ($2,000), and could be sold for about that sum, and your orators apprehend and believe that if notice should be given of an application for a restraining order the injury sought to be restrained would be consummated before a hearing could be had in pursuance of such notice.

12 Wherefore, inasmuch as your orators are without remedy at law, and to the end that said William Helphinstine, Howard A. Truedly, John J. McLaughlin, and Elisha Hyatt, Hiram Hyatt, Albert M. Whitten, and Jared W. Levings, their agents and employés, and all persons acting under their authority, may be enjoined and restrained from removing or seizing said iron rails, or in any manner impairing your orators' equitable title thereto, and from in any manner wasting or injuring any of the property so purchased by your orators at said execution sale, and that a temporary restraining order may be at once issued, to continue until notice and hearing thereon can be had.

And to the end that, pending this suit, a receiver of all said property may be appointed by your honors.

May it please your honors to grant to your orators the writ of subpœna, directed to said William Helphinstine, Howard A. Truedly, John J. McLaughlin, and Elisha Hyatt, Hiram Hyatt, Albert M. Whitten, and Jared W. Levings, commanding them, and each of them, to appear in this court, as prescribed by its rules in equity, and make full, true, and perfect answer, under their respective oaths, to all the matters and things herein set forth, and abide the orders and decree of your honors in the premises.

And your orators will ever pray, &c.

THE VINCENNES NATIONAL BANK,
THE WASHINGTON NATIONAL BANK,
Complainants.
BAKER, HORD & HENDRICKS,
F. W. VIEHE, *Solicitors.*

13 UNITED STATES OF AMERICA, *District and State of Indiana:*

Frederick W. Viehe, being duly sworn, on his oath says: That he is the solicitor and agent in this behalf of the complainants in this cause, and is personally cognizant of the matters set forth in the foregoing bill, in so far as the same are stated positively and of per-

sonal knowledge; that all said matters thus stated positively and as of personal knowledge are true, and as to all other matters stated in said bill as upon information and belief, deponent says that he has reason to believe, and verily does believe, that the same, as set forth in said bill, are true.

F. W. VIEHE.

Sworn to and subscribed before me, this 25 day of December, 1877.

W. P. FISHBACK, *Clerk.*

I acknowledge myself surety for the payment of all costs in this case.

Dec. 25, '77. F. W. VIEHE.

11 EXHIBIT "A."

I, James H. House, sheriff of Knox county, in the State of Indiana, certify that in pursuance of certain executions to me directed and issued on judgments rendered in the Daviess circuit court, one in favor of the Vincennes National Bank against William Helphinstine, John J. McLaughlin, and Howard A. Truedley; one in favor of the same bank against William Helphinstine, Francis P. McDonald, and William Tranter; one in favor of the Washington National Bank against William Helphinstine, John J. McLaughlin, and Howard A. Truedly, and one in favor of the same bank against William Helphinstine, Francis P. McDonald, and William Tranter, and one in favor of Elisha Hyatt, Hiram Hyatt, Albert M. Whitten, and Jared W. Levings against William Helphinstine and John J. McLaughlin, I did on this 9th day of June, A. D. 1877, between the hours of 10 a. m. and 4 p. m., at the court-house door, in said county, at public auction sell to the Vincennes National Bank and the Washington National Bank the property in said county described as follows, to wit: Part of donation lot 242, bounded as follows: Beginning at the west corner of the lot, thence north 51¼ degrees east $28\frac{40}{100}$ chains, south 38¾ degrees east $11\frac{97}{100}$ chains, south 51½ degrees west $14\frac{40}{100}$ chains, south 38¾ degrees east $3\frac{16}{100}$ chains, south 51¼ degrees west $14\frac{40}{100}$ chains to the line of the lot, north 38¾ degrees west $15\frac{13}{100}$ chains to the beginning, containing $39\frac{5}{100}$ acres, for the sum of fifty dollars. A part of donation lot 241, bounded as follows: Beginning at a point on the northwest line of the lot at a stake 1-6 chains from the north corner, thence south 51¼ degrees west 20 chains; thence south 29 degrees east 5 chains; thence north 15 51¼ degrees east 20 chains; thence north 29 degrees west 5 chains to the beginning, for the sum of one hundred and fifty dollars. Parts of survey number one and of the west fractional half of section twenty-five, in township three and four north, of range eight west, described as follows: Beginning at the west corner of the survey, thence south 38¾ degrees east with the survey line $66\frac{30}{100}$ chains to the south corner of the survey; thence north 51¼ degrees east $17\frac{25}{100}$ chains to White River; thence north up the river $1\frac{40}{100}$ to a sycamore, 30 id.; thence north 38¾ degrees west $79\frac{80}{100}$ chains to the line of donation lot 243; thence south 51¼ degrees west $18\frac{68}{100}$

chains to the north corner of donation lot 245; thence south 38¾ degrees east 13 $\frac{85}{100}$ chains to the beginning, for the sum of five dollars. A strip of ground with a railroad track thereon leading from the Indianapolis and Vincennes railroad at Bicknell to the coal mine of William Helphinstine & Co., the same being in sections 16, 21, and 22, in township four north, of range eight west. The centre line of said railroad track is as follows: Beginning on the south line of section 22, 23 feet east of the corner of sections 21, 22, 27, and 28, thence curving to the left in a northwesterly direction with a radius of 1,250 feet a distance of 255 feet to a stake on the west line of section 22, 250 feet north of the southwest corner of section 22; thence continuing to curve, as aforesaid, a distance of 345 feet to the tangent point of said line; thence north 27¼ degrees west 2,290 feet to the north line of the southeast quarter of section 21, 141 feet east of the southeast corner of the southwest quarter of the northeast quarter of said section; thence continuing on the same course 310 feet to a point on the east line of the southwest quarter of the northeast
16 quarter of section 21, 275 feet north of the southeast corner of said quarter of a quarter; thence continuing on the same course 1,223 feet to the north line of said southwest quarter of the northeast quarter of section 21, 562 feet west of the northeast corner; thence on the same course 822 feet; thence curving to the right, with a radius of 955 feet, a distance of 655 feet to the north line of section 21, 311 feet east of the northwest corner of said quarter section; thence curving to the right, with a radius of 955 feet, a distance of 400 feet to the Indianapolis and Vincennes railroad. The said strip of ground is forty feet in width, being twenty feet on each side of said centre line, through the southwest quarter of the southwest quarter of section 22, the southeast quarter of section 21, and in section 16, and thirty feet in width, being fifteen feet on each side of said centre line, through the southeast quarter of the northeast quarter, the southwest quarter of the northeast quarter, and the northwest of the northeast quarter of section 21.

Also the estate, rights, title, and interest of the defendants William Helphinstine, Howard A. Truedley, and John J. McLaughlin, and each of them, being the residue of terms of years unexpired which they have under certain mining leases in and to real estate in said county, to wit: In the S. ½ of S. E. ¼ of Sec. 16; W. ½ of N.W. ¼ of Sec. 16; W. ½ of S. W. ¼ of Sec. 16; S. W. ¼ of S. E. ¼ of Sec. 17; S. E. of S. W. ¼ of Sec. 17; N. E. ¼ of Sec. 20; S. ½ of S. W. ¼ of Sec. 21; S. ½ of S. E. ¼ of Sec. 21; N. E. ¼ of S. E. ¼ of Sec. 21; lots No. 1 and 2 (N. W. fr'l ¼) of Sec. 28; W. ½ of N. E. ¼ of Sec. 28; S. E. ¼ of N. E. ¼ of Sec. 28; lots No. 1 and 2 (W. ½ of S. E. ¼) of Sec. 22; lots No. 1, 2, and 3 of fr'l Sec. 27; lots No. 3 and 4,
17 fr'l Sec. 28; N. E. ¼ of N. E. ¼ of Sec. 28; excepting therefrom 10 acres conveyed March 20, 1871, by John H. Phillippi and wife to James S. Little, said 10 acres being in the northeast corner of said tract, all in township 4, north of range 8 west, seventy-five acres in the north corner of donation No. 154, 120 acres, part of donation No. 241, beginning at a stone set 13 $\frac{85}{100}$ chains from the west corner of said donation on a course of south 38¾ east; thence south

38¾ degrees east 31 poles to a stone; thence north 53½ degrees east 148 poles to a stake; thence north 38¾ degrees west 148 poles; thence south 51¼ degrees west to a post 91½ poles of the west corner of said lot, on a course of north 51¼ degrees east from said west corner; thence south 38¾ degrees east 72 poles; thence south 51¼ east 91½ to the beginning, estimated to contain one hundred and twenty acres.

Part of donation No. one hundred and fifty-one, beginning at the north corner of said donation; thence south 38¾ degrees east 50 chains to the east corner of said donation; thence south 51¼ degrees west 20 chains; thence north 38¾ degrees west 50 chains; thence north 51¼ degrees east 20 chains to the beginning, containing one hundred acres. One hundred and twenty acres in the south corner of donation No. two hundred and forty-one. Donation No. 147, containing 400 acres. Also part of lot No. 3 of fr'l Sec. 18, T. 4 N., R. 8 W., beginning on the east line of donation No. 147, at the south corner of lot No. 3; thence north 38¾ degrees west 104 poles; thence east 34 poles; thence south 25 degrees east 86 poles to the beginning, containing 10 acres. Part of donation No. one hundred
18 and forty-eight, beginning at the east corner of said donation; thence north 38¾ degrees west 50 chains to the north corner; thence S. 51¼ degrees W. 80 chains to the west corner of said donation; thence S. 38¾ degrees E 42 15-100 chains to a point set 782⅝-100 chains, N. 38¾ degrees W. from the south corner of said donation; thence N. 51¼ degrees E. 29 88-100 chains; thence N. 38¾ degrees W. 2 15-100 chains; thence N. 51¼ degrees E. 19 85-100 chains; thence S. 38¾ degrees E. 10 chains to the donation line; thence N. 51¼ degrees E. 30 74-100 chains to the beginning, estimated to contain 357 34-100 acres.

Donation No. one hundred and forty-nine, except one hundred acres thereof, bounded as follows: Beginning at the west corner of said donation, thence N. 51¼ degrees E. 41 13-100 chains; thence S. 38¾ degrees E. 17 75-100 chains to the centre of the Edwardsport road; thence S. 33¾ degrees W. 8 chains; thence S. 82 degrees W. 7 52-100 chains to the centre of the Edwardsport road; thence S. 13 degrees E. 11 52-100 chains; thence S. 51¼ degrees W. 22 32-100 chains to centre of Apraw road; thence N. 38¾ degrees W. 27 chains to the beginning.

Donations No. 153, 154, and 155, and one hundred acres in the south corner of 244. On said land and leasehold is situate, and was sold to them, one engine and boiler and hoisting apparatus, steam-pump, Fairbanks' railroad scales, one wagon scales, four coal screens, blacksmith shop, one office building, one engine building and dump-house, stable, one line-house, two dwelling-houses, track in
19 coal mines; also, railroad track, switches, and all fixures belonging to the coal mine on said real estate and leasehold, for the sum of nine thousand seven hundred and ninety-five dollars. And the purchasers, having paid the purchase-money, will be entitled to a deed unless the property should be redeemed within one year from the date of the sale.

JAMES H. SHOUSE,
July 2nd, 1877. *Sheriff, Knox County, Indiana*

2—182

STATE OF INDIANA, } ss:
Knox County, }

Personally appeared before me, a notary public within and for said county, James H. Shouse, sheriff aforesaid, and acknowledged the execution of the above certificate.

Witness my hand and official seal, this 12th day of September, 1877.

ROBERT G. EVANS,
Notary Public.

Endorsed: Received for record Sept. 12th, 1877, at 11 o'clock a. m., and recorded in certificate record No. 1, pages 5, 6, 7, 8, & 9. James J. Mayer, R. K. C., by H. A. Foulks, dep'ty. Filed Dec. 25, 1877. W. P. Fishback, cl'k.

20 And thereupon said complainants move the court for a temporary restraining order, to be operative only until notice can be given to said defendants, restraining the defendants, and each of them, from removing or in any manner disposing of the iron rails that were heretofore laid on the strip of ground leading from the Indianapolis and Vincennes railroad, at the town of Bicknell, in Knox county, State of Indiana, to the coal mine of said William Helphinstine & Co., the same being in sections 16, 21, and 22, in township 4 north, of range 8 west.

And the court being sufficiently advised, it is ordered that said motion be, and it hereby is, granted.

And it is ordered that said defendants be and remain so restrained until the fourth day of January, 1878, when said matter will be further heard. And it is hereby directed that a copy of this order duly served upon said defendants shall be deemed due notice to said defendants, that on the day last named said complainants will move the court for an interlocutory order pursuant to the prayer of said bill.

And afterwards, to wit, at the November term of said circuit court on the 4th day of January, 1878, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

21 Come now the parties, by their solicitors, and by leave of court the complainants file an amendment and supplement to their bill of complaint, which reads as follows:

The said complainants, by leave of the court first had and obtained, by way of amendment and supplement to their original bill of complaint filed herein on the 25th day of December, 1877, further complaining, show unto your honors:

That on the 22d day of December, 1877, the said Elisha Hyatt, Hiram Hyatt, Albert M. Whitten, and Jared W. Levings caused an execution to issue out of the Daviess circuit court, in the county of Daviess, and State of Indiana, against the said William Helphinstine and John J. McLaughlin, and directed to the sheriff of the county of Knox, in the State aforesaid, who was thereby commanded

to levy of the property of the execution defendants in said county of Knox, subject to execution, the sum of five thousand nine hundred and forty-seven dollars and forty-eight cents. And on the same day the said Elisha Hyatt and Jared W. Levings caused an execution to issue out of the said Daviess circuit court against the said William Helphinstine and John J. McLaughlin, and directed to said sheriff of the county of Knox, who was thereby commanded to levy of the property of the execution, defendants in said county of Knox, subject to execution, the sum of six thousand two hundred and ten dollars and ten cents: that said executions were delivered to James H. Shouse, sheriff of said county of Knox, on Sunday, the 23d day of December, at eleven o'clock a. m., to be executed. And
22 afterwards, on the 25th day of December, 1877, and after the filing of said bill, as complainants believe, the said sheriff, James H. Shouse, by Martin L. Seddelmeyer, his deputy, levied said executions [on] one railroad frog, 72 iron rails, 360 rails, which, before that time, formed part of the track leading from said town of Bicknell to the coal mine of William Helphinstine & Co., and which had been taken from the track, as in the complainants' bill of complaint set forth, 24 rails then loose on said track, 3 switch-brakes, 7 railroad frogs, 78 iron rails fast on the track, 2,136 fish bars, a lot of spikes and bolts, about 3,700 cross-ties. And said property, until the destruction of the track, as in the complainants' bill of complaint set forth, constituted part of the track. Said sheriff also on the same day levied executions on one mine force-pump, about 140 feet three-inch iron pipe, about 200 feet 1½-inch iron pipe, about 600 feet one-inch iron pipe, one large steam boiler, one engine drum and fixtures, about 400 feet of wire rope, 4 coal screens and fixtures thereto belonging, one pair of railroad scales, one pair of wagon scales, one small engine, one lot of T iron in the coal mine, one small pump in the well, two cages, 3 valves, one water-tank, one smoke-stack, one steam whistle; all of which constitute part of the machinery for operating said mine, and is firmly attached to the real estate and leasehold aforesaid, except that some small portion of said property may be temporarily detached, but all is provided and necessary for
23 conducting the business of mining at said mine.

Your orators further state, on information and belief, that James H. Shouse, as such sheriff, has advertised the property for sale on said executions on the 7th day of January, 1878, and will then sell the same if not restrained by the order of this court.

Your orators further show that said mine pump is used for pumping the water from the mine; the pipes before mentioned are used for discharging the water pumped up, conducting steam from the boiler to the pump in the mine, and for conducting water to the pump in the mine; the boiler, engine drum and fixtures, the wire-rope, the cages, valves, are used and applied to bring the coal from the mine through the shaft to the surface; the coal screens are firmly fixed to the building, and are used for screening the coal and making it suitable for market; the railroad and wagon scales are firmly fastened in the ground, and are used for weighing coal; the T iron is in the mine, and is used, and, as they believe, constitutes track

on which the coal is conveyed to the shaft; the water-tank is used to supply the boiler with water; the smoke-stack is attached to the boiler; the steam whistle is also attached to the boiler; and all said property is situated either on the track aforesaid or on the north half of the northwest quarter of section 27, in township 4 north, of range eight west, in Knox county, the same being held by William Helphinstine & Co. by a lease for mining purposes, and a piece of ground to which William Helphinstine has the legal title, but which was bought and paid for by William Helphinstine & Co.
24 and is described as follows: Commencing at a point 40 rods south of the northeast corner of section 28, in the township and range aforesaid, thence south 40 rods, west 16 rods, north 40 rods, east 16 rods, and all in the county of Knox and State of Indiana; and said leasehold and real estate was bought by the complainants, as in their bill of complaint alleged, and the property above described as having been levied on was, at and before said sale, as they are informed and believed, attached to said real estate and leasehold as aforesaid, and sold with the same.

To the end, therefore, that your orators may have the relief prayed by them in their original bill, and to the end that the said threatened sheriff's sale may be enjoined and restrained, and that your orators may have such other and further relief in the premises as to your honors may seem just, may it please your honors to grant the writ of subpœna, directed to the said James H. Shouse, who is a citizen of Knox county and State of Indiana, commanding him to appear as prescribed by the rules of equity obtaining in this court, and answer as well said original bill as this amended and supplemental bill, and abide the orders and final decree of this court in the premises.

And your orators pray that all said other defendants may be required, under their several corporal oaths, to answer as well all the matters and things in said original bill contained as all the
25 matters and things in this amended and supplemental bill contained.

And your orators will ever pray, &c.

THE VINCENNES NATIONAL BANK.
THE WASHINGTON NATIONAL BANK.
BAKER, HORD & HENDRICKS,
F. W. VIEHE,
Complainants' Solicitors.

UNITED STATES OF AMERICA, *District of Indiana:*

Frederick W. Viehe, being duly sworn, on his oath says: That he is the solicitor and agent in this behalf of complainants in this cause; that he is personally cognizant of the matters set forth in the foregoing amendment and supplement to the original bill of complaint, so far as the same are stated positively and of personal knowledge, and that the same are true; and as to all other matters stated in said amendment and supplement to said original bill as upon infor-

mation and belief, deponent says that he has reason to believe, and verily does believe, that the same, as set forth in said bill, are true.

F. W. VIEHE.

Subscribed and sworn to before me, this 18th January, 1878.

W. P. FISHBACK, *Clerk.*

And complainants now move for an interlocutory injunction, in accordance with the prayer of the original bill and the said amendment and supplement thereto, and they also move for the appointment of a receiver for all said property. And the exigency of the court not admitting of the hearing of said motions at this
26 time, the same are set down for hearing on the 18th day of January, 1878. And it is ordered by the court that the restraining order heretofore granted shall continue in force until said day when said motions will be further heard. And it is further ordered that James H. Shank, sheriff of Knox county, be, and hereby is, restrained from selling said property on said execution until the hearing of said motions or the further order of this court.

And the complainants now file an injunction bond in the penal sum of five thousand dollars, with Wilson J. Williams and William E. Niblack as sureties, which is approved by the court.

And afterwards, to wit, at the May term of said circuit court, on the 1st day of July, 1879, in chambers, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, William Helphinstine, Howard A. Twedley, and John J. McLaughlin, by Mess. Dye and Harris and William Armstrong, their solicitors, and file their separate answer herein, in the words following:

The defendants, William Helphinstine, Howard A. Truedley, and Jno. J. McLaughlin, composing the firm in the bill mentioned as doing business under the name of Wm. Helphinstine & Co., now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imper-
27 fections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer thereto, answering saith: They admit they were partners in the coal-mining property in the bill described; they also admit that Hyatt, Levings & Co. recovered judgment against them in the Daviess circuit court for the sums and at the times following, to wit, March 7th, 1876, $5,059.70; June 5th, 1877, $6,198.05; each for the same debt of said firm of Helphinstine & Co.

They say, in answer to so much of the bill as charges that the plaintiffs recovered judgments against them in the Daviess circuit court, that they admit the institution of such suits on the 24th day of February, 1876; they say they did not appear to either action; that service was had upon each of these defendants on the day following. Said court began on the 6th day of March following, and

said judgments were entered on the 7th of said month, as charged in the bill; and they say, unless the 29 day of Feb. shall be counted as a legal day, then they were not served with process ten days before the 1st day of said term, as by the statute of Indiana required.

They admit the issuance of the executions and their delivery to the sheriff of Knox county, as set forth in the bill in Dec. 21st, 1876, which executions they admit were, on the 17th day of May, 1877, still in the hands of said sheriff; but whether or not said executions, or either of them, were levied on said day on the property in the bill described, they have no actual knowledge, and, therefore, neither admit or deny the fact, but demand that plaintiffs be
28 required to make proof thereof. Said property described in the bill was and is situate in Vigo township, in said county of Knox, about 15 miles distant from the Knox county court-house, which is situate in the city and township of Vincennes. These defendants deny that said property was real property under the laws of Indiana, but the same was and is personal property under the laws of the State then and ever since in force. As to all of said property except the railroad track, to wit, the coal mine property, these defendants say the only interest they had was the right under certain mining contracts made with the owners of the fee during the year 1874, whereby these defendants had the right for the period of fifty years from the date of said contract to mine the coal under the surface of said land, for which right they were to pay twelve cents for each ton of screened coal mined on and removed from said land, which rents were payable quarterly; that it was under and by virtue of such contracts, and none other, that they were in possession of said coal mine; which several contracts these defendants will submit to your honor on the hearing of this cause.

They further say that under and by virtue of said several mining contracts they had the right to construct, erect, and maintain during the period of such leases all necessary buildings and fixtures to secure the successful operation of the said mines, which buildings, fixtures, &c., they had the right to remove whenever said contract was terminated in any manner whatever, by forfeiture, ex-
29 piration, or otherwise, and they say that the buildings, engines, tracks in said mines, scales, and other personal property in the bill mentioned were used in and about the operation of said mine under and in pursuance of said contracts, and not otherwise. And these def'ts deny that said property was only worth $2,000.00 when levied on, but, on the contrary, expressly aver the fact to be that when said property was levied on it was and still is worth $7,000.00.

As to so much of said property mentioned in the bill as the railroad track connecting the mine with the I. & V. R'y these defendants say, that they deny that they owned the fee of the land or any real interest therein upon which said track rested; the greater portion of said track was built upon the lands leased to them in the manner aforesaid, in which lease it was provided that these defendants should have the use of all the land necessary for the location, construction, and occupancy of a railroad.

That as to the remainder of said railroad line it was built and

maintained upon the lands described by and with the license of the owners thereof given to use said lands for a railway track, and no other purpose, so long as the same might be used in operating said mine.

These defendants say that they deny that the property described in the bill was sold to said plaintiffs as averred by them; they have no actual knowledge of the facts concerning said sale other than as furnished by said bill and as learned from these plaintiffs, and
30 they therefore pray that plaintiffs be required to make proof thereof. They say said property was never sold at or near said coal mine, but if any offer thereof was made it was at the court-house door, in Vincennes, fifteen miles distant from said mine; that said property was sold, if at all, as real estate and not as personal property.

Wherefore these defendants say they are advised by their counsel that such pretended sale was wholly null and void, and they pray it may be so adjudged in final hearing of this cause.

And these defendants say when said mine was levied upon by the plaintiffs it was of great value, to wit, $25,000,00; that by reason thereof, and of the insolvency and failure of said firm and of this litigation, said mine has stood and is now standing idle, and by reason of non-use it depreciated and is depreciating in value from day to day; that it cannot be sold by reason of the clouds now put upon its title by the litigation.

And inasmuch as all the parties are before the court, they ask your honors to appoint a receiver to take possession of said property & sell the same and apply the proceeds of the sale to the firm debts.

The defendants admit that said Helphinstine did remove the railroad track in the manner and at the time stated in the bill of his own motion and without the knowledge or consent of his partners; and he, said Helphinstine, says that at the time he believed said property was his own partnership property, and that he had the right to exercise all the rights of ownership thereover, and that, acting in pursuance of said belief and believing said
31 pretended sale was void, he did remove the track. The defendants admit they were insolvent at the time of the commencement of this suit.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in said complainants' said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of these defendants; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court may direct.

And these defendants humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WM. HELPHINSTINE.

William Helphinstine, one of the defendants herein, for himself and on behalf of his co-defendants, John J. McLaughlin and Howard A. Truedly, being duly sworn, upon his oath says: That the matters and things in the foregoing answer are true.

[SEAL.] S. E. KERCHEVAL,
Notary Public, Daviess County, Ind.

And at the same time comes the defendant, James H.
32 Shouse, by Mess. Dye and Harris and William Armstrong, his solicitors, and files his separate answer herein in the words following, to wit:

The defendant, James H. Shouse, sheriff of Knox county, now and all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill and supplemental bill contained, for answer thereunto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says:

He admits that he was at the time of the filing of the supplemental —— herein against him, and still is, the sheriff of Knox county, Indiana.

He admits that there came to his hands as such sheriff two certain executions from the clerk of the Daviess circuit court, issued in favor of Hyatt, Levings & Co. against William Helphinstine & Co. Said executions were issued on December 22d, 1877, and came to his hands on the day following. One of said executions was for $6,198.05, and the other was for $5,059.70, on which certain interest and costs had accrued. And afterwards, on the 25th day of December, 1877, he levied said executions on the following property in Vijo township, Knox county, Indiana, as the property of the execution defendants, to wit:

One railroad frog at north end of track, seventy-two iron rails
33 on track, three hundred and sixty iron rails off the track (360); twenty-four (24) iron rails moved on the track; three switches, seven frogs, seventy-eight iron rails at north end of the track; one mine force pump; about 140 feet of three-inch pipe; about 200 feet 1½-inch pipe; about 600 feet 1-inch pipe; one large boiler and fixtures; one engine drum and fixtures; about 400 feet wire rope; four coal screens and fixtures; one pair of railroad scales; one pair of wagon scales; one small steam engine, "Little Giant;" a lot of T-iron in the defendants' coal mine; one small pump in the well; two cages; 2,136 fish-bars; a lot of spikes and bolts; three valves; one water-tank; one smoke-stack; one steam whistle, and 3,700 crossties. He was proceeding to sell said property as the personal property of said Wm. Helphinstine & Co., when he was enjoined by this court, which order he has respectfully obeyed from thence till now; that as said executions expired by limitation of time, he returned the same to the clerk of said Daviess county, who returned unto him proper *vendis*, which he has since returned to the clerk of said Daviess county for *alias* by order of William Armstrong, attorney

for said Hyatt, Levings & Co. Said property, when levied on, was, and still is, worth the sum of $7,000.00.

He says he has no knowledge of the several other matters charged in said bill and supplemental bill other than as he is informed by said bills. Wherefore he neither admits nor denies the same; but if the same be material to his protection as such sheriff in
34 the exercise of his official duties, he prays the court will require the plaintiffs to make proper proof thereof, to the end that he may be fully protected by any judgment that may be rendered herein. And this defendant stands ready to prove the material allegations of his answer as this honorable court may direct. And he humbly prays that he may be hence dismissed with his reasonable costs and charges in this behalf sustained.

JAMES H. SHOUSE.

James H. Shouse, being duly sworn, on his oath says: The matters and things in the foregoing answer are true. This 26th June, 1879.

CHAS. G. McCORD,
U. S. Com., Dist. of Ind.

DYE, HARRIS, ARMSTRONG, *Solicitors.*

At the same time come the defendants, Elisha Hyatt, Hiram Hyatt, and Jared W. Levings, by Mess. Dye and Harris and Wm. Armstrong, their solicitors, and file their separate answer herein in the words following, to wit:

The defendants, Elisha Hyatt, Hiram Hyatt, and Jared W. Levings, comprising the firm in the bill mentioned, as doing business under the name of Hyatt, Levings & Co., and Albert M. Whitten, now and at all times hereafter saving to themselves all and all manner of benefit, advantage of exception, or otherwise that can or may be had or taken to the many errors, uncertainties,
35 and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer thereto, answering, saith:

They admit they were partners in business as in said bill described; that they admit that on the 7th day of March, 1876, they obtained judgment in the Daviess circuit court, in the State of Indiana, against the defendants, William Helphinstine and John J. McLaughlin, for the sum of $5,059.70, upon process issued out of said court on the 24th day of February, 1876, and served on said defendants on the 25th day of February, 1876, but believing the said judgment void for want of sufficient process, said defendants, the said Elisha Hyatt, Hiram Hyatt, and Jared W. Levings, afterwards filed their complaint in said Daviess circuit court against the said William Helphinstine and the said John J. McLaughlin, and on the 5th day of June, 1877, by the judgment and consideration of said court, recovered judgment against the said defendants for the sum of $6,198.05, which said last judgment was upon the same cause of action upon which the judgment of March 7th, 1876, was rendered as aforesaid. That each of the said judgments was ren-

dered upon note for borrowed money loaned to the firm of William Helphinstine & Co., which said notes was signed by said Helphinstine and McLaughlin, and which was used by and for the benefit of the said firm as aforesaid.

The said defendants admit that the plaintiffs recovered judgments at the time and for the sums as in the plaintiffs' bill
36 stated; that executions were issued thereon and delivered to the sheriff of Knox county, Indiana, as charged in the bill, but whether the court had jurisdiction to render said judgment these defendants are not advised further than informed in said bill; they say said suits were begun on the 24th day of February, 1876, and service of summons had on the 25th day of February, 1876, on said defendants, and that said term began on the 6th day of February, 1876.

That the said defendants admit that on the 22d day of December, 1877, they caused executions to issue out of the clerk's office of the Daviess circuit court in the State of Indiana, directed to the sheriff of Knox county, which came to the hands of the said sheriff on the 23d day of December, 1877, and that on the 25th day of December, 1877, the said sheriff levied the same on the property and in the manner in the supplemental bill set forth as the personal property of William Helphinstine & Co., and was proceeding to sell the same to satisfy the debt of these defendants when enjoined by a writ issued out of this court. The debt of these defendants, evidenced by the said judgments, is unpaid, except a small sum realized from the sale of other property not connected with the coal mine or property described in the bill or supplemental bill, and that nothing was ever paid on their execution, or to them in any manner arising from the sale of said property described in the bill on the 7th day of June, 1877.

And these defendants deny that William Helphinstine & Co. were the owners in fee-simple of any of the premises in the bill or supplemental bill described; but that all of the said property
37 described in the bill was and is situate in Vigo township, in Knox county, Indiana, and about fifteen miles distant from the Knox county court-house, which is situate in the city of Vincennes, in the township of Vincennes, Knox county, Indiana. These defendants also deny that said property in the bill described was real property under the laws of the State of Indiana, but that the same was and is personal property under the laws of Indiana, then and ever since then in force in said State. That the property described in the bill and supplemental bill was the personal property of William Helphinstine & Co., situate in Vigo township, Knox county, Indiana, and levied on on the 25th day of December, 1877, to satisfy the debt of defendants as above described. Said defendants deny that the plaintiffs are now, or ever were, the owners of any of the property in the bill or supplemental bill described, and these defendants demand that the plaintiffs be required to make proof of their title to said property, if any they shall still claim, at the hearing of said cause.

These defendants admit that the plaintiffs caused their executions

to be levied on said coal mine property, in the bill described, and also the railroad track, as the real property of said William Helphinstine & Co., to cause the same to be advertised and exposed to sale at the door of the court-house of said county, as alleged in the bill, and that said plaintiffs then and there bid the sums in the bill set forth, which was credited on their executions; but these defendants say said sale was void, and passed no title to the said pur-
38 chasers, for that the only interest said Helphinstine & Co. had in and to said coal mine was the right to mine and remove coal from the lands in the bill described for a period of years, under certain contracts or leases executed by the owners of the fee, which interest is personal property under the laws of Indiana. That said Helphinstine & Co. did not own the fee on which said railroad track was built, but that the same was constructed and maintained by permission of the owners of the fee of the land on which it rested. That the property levied upon for the use of these defendants, as described in the supplemental bill, other than the railroad iron, were said fixtures placed in and about said mine by said Helphinstine & Co. under the provisions of their several leases, which fixtures or buildings by the terms of said leases, were removable at the pleasure of the lessees.

Wherefore, these defendants say the pretended sale made at the court-house door in Knox county, Indiana, is null and void.

Said defendants further state, that after the creation of the debt of the said Helphinstine & Co. the said defendant, Albert M. Whitten, sold, assigned, and transferred all his interest in and to the said debt to the defendants, Elisha Hyatt, Hirani Hyatt, and Jared W. Levings.

Said defendants would further state that the route selected by said Helphenstine & Co., and upon which they constructed said railroad was not the only one on which a railroad might have been
39 built, but that a railroad could be constructed to the Indianapolis & Vincennes railroad without any greater expense over several different lines other than the one used by the said firm of Helphenstine & Co. And these defendants deny that the property levied on is only worth $2,000.00, but, on the contrary, they aver that the property levied on is now, and before this action was begun was, worth $7,000.00.

And these defendants deny all and all manner of unlawful combinations and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JARED W. LEVINGS.

Jared W. Levings, one of the defendants herein, for himself and on behalf of his co-defendants, Elisha Hyatt and Hiram Hyatt, being duly sworn, upon his oath says that the matters and things in the foregoing answer are true.

[SEAL.]

S. E. KERCHEVAL,
Notary Public, Daviess County, Ind.

40 And afterwards, to wit, at the May term of said circuit court, in recess thereof, on the 15th day of July, 1879, the following further proceedings in the above-entitled cause were had, to wit:

Come now the complainant, by Messrs. Baker, Hord & Hendricks, and Viehe and Evans, its solicitors, and files its replication herein in the words following, to wit:

The Vincennes National Bank and The Washington National Bank reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the several answers, for replication thereto say: That they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that the said answers of the several defendants are uncertain, untrue, and insufficient to be replied to by these repliants, without this, that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied to, confessed, and avoided, traversed or derived is untrue: all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

BAKER, HORD & HENDRICKS,
VIEHE & EVANS,
Solicitors for Complainants.

41 And afterwards, to wit, at the November term of said circuit court, on the 6th day of April, 1880, in recess of said court, the following further proceedings in the above entitled cause were had, to wit:

Come now the defendants and by their solicitors file caveat herein, in the words following, to wit:

"Let this be a *caveat* against entering or enrolling the decree or judgment pronounced or made by his honor Judge Gresham, on Saturday, the 3d day of April, 1880.

As soon as the plaintiff's counsel have drafted the decree it is to be presented to defendants' solicitors, & when settled we will file a petition for a rehearing on the point that the leasehold and machinery thereon, being personal property, could not be sold as real estate.

And we file this *caveat* to save unto defendants their rights in this behalf.

WILLIAM ARMSTRONG,
ADDISON C. HARRIS,
Def'ts' Sol'rs."

Ap'l 6th, 1880.

And afterwards, to wit, at the May term of said circuit court, on

the first day of July, 1880, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above entitled cause were had, to wit:

42 This cause coming on to be heard is submitted to the court upon the pleadings and exhibits and the written agreement of parties and evidence on file. And the court having heard the same and the arguments of counsel, and being sufficiently advised, finds the equity of this case to be with the complainants, and particularly it is found that the allegations in said bill of complaint contained as to the recovery of the judgments in the Daviess circuit court, and as to the issuing executions thereon to the sheriff of Knox county, in said State of Indiana, and as to the levy of said executions upon the property of said Helphinstine, McLaughlin, and Truedley, and as to the sale of said property under said executions of said complainants are true.

And it is found by the court, that by virtue of their said purchase at said sheriff sale, under said executions duly made on the ninth day of June, 1877, and by virtue of the certificate of purchase thereupon executed to them by said sheriff, said complainants became the absolute equitable owners (subject only to the right of redemption as provided by the laws of said State of Indiana) of the real estate, fixtures, machinery, and chattels real, situate in Knox county, Indiana, and described as follows: A strip of ground with a railroad track thereon, leading from the Indianapolis and Vincennes railroad, at Bicknell, to the coal mine of William Helphinstine & Co., the same being in sections 16, 21, and 22, in township four north, of range eight west, the centre line

43 of said railroad track, is as follows: Beginning on the south line of section 22, 23 feet east of the corner of sections 21, 22, 27, and 28, thence curving to the left in a northwesterly direction, with a radius of 1,250 feet, a distance of 255 feet to a stake on the west line of section 22, 250 feet north of the southwest corner of section 22; thence continuing to curve, as aforesaid, a distance of 345 feet to the tangent point of said line; thence north 27¼ degrees west 2,290 feet to the north line of the southwest quarter of section 21, 141 feet east of the southeast corner of the southwest quarter of the northeast quarter of said section; thence continuing on the same course 310 feet to a point on the east line of the southwest quarter of the northeast quarter of section 21, 275 feet north of the southeast corner of said quarter of a quarter; thence continuing on the same course 1,223 feet to the north line of said southwest quarter of the northeast quarter of section 21, 562 feet west of the northeast corner; thence on the same course 822 feet; thence curving to the right, with a radius of 955 feet, a distance of 655 feet to the north line of section 21, 311 feet east of the northwest corner of said quarter section; thence curving to the right, with a radius of 955 feet, a distance of 400 feet to the Indianapolis and Vincennes railroad. The said strip of ground is forty feet in width, being twenty feet on each side of said centre line, through the southwest quarter of the southwest quarter of section 22, the southeast quarter of section 21, and in section 16, and thirty feet in width,

44 being fifteen feet on each side of said centre line, through the southeast quarter of the northeast quarter, the southwest quarter of the northeast quarter, and the northwest quarter of the northeast quarter of section 21.

Also, the estate, rights, title, and interest of the defendants, William Helphinstine, Howard A. Truedley, and John J. McLaughlin, and each of them, being the residue of terms of years unexpired which they have under certain mining leases in and to real estate in said county of Knox, to wit: The south half of the southeast quarter of section 16, the west half of the northwest quarter of section 16, the west half of the southwest quarter of section 16, the southwest quarter of *of* the southeast quarter of section 17, the southeast quarter of the southwest quarter of section 17, the northeast quarter of section 20, the south half of the southwest quarter of section 21, the south half of the southeast quarter of section 21, the northeast quarter of the southeast quarter of section 21; lots 1 and 2, being the northwest fractional quarter of section 28; the west half of the northeast quarter of section 28, the southeast quarter of the northeast quarter of section 28; lots one and two, being the west half of the southeast quarter of section 22; lots one, two, and three of fractional section 27, lots three and four of fractional section 28; the northeast quarter of the northeast quarter of section 28, excepting therefrom ten acres conveyed March 20th, 1871, by John H. Phillippi and wife to James S.

Little, said ten acres being in the northeast corner of said tract;
45 all in township four north, of range eight west; seventy-five acres in the north corner of donation lot 154. One hundred and twenty acres, part of donation lot 241, beginning at a stone set $13\frac{88}{100}$ chains from the west corner of said donation on a course of south $38\frac{3}{4}$ degrees east, thence south $38\frac{3}{4}$ degrees east 31 poles to a stone; thence north $53\frac{1}{2}$ degrees east 148 poles to a stake; thence north $38\frac{3}{4}$ degrees west 148 poles; thence south $51\frac{1}{4}$ degrees west $91\frac{1}{2}$ poles from the west corner of said lot on a course of north $51\frac{1}{4}$ degrees east from said west corner; thence south $38\frac{3}{4}$ degrees east 72 poles; thence south $51\frac{1}{4}$ degrees east $91\frac{1}{2}$ poles to the beginning. Part of donation lot 151, beginning at the north corner of said donation, thence south $38\frac{3}{4}$ degrees east 50 chains to the east corner of said donation; thence south $51\frac{1}{4}$ degrees west 20 chains; thence north $38\frac{3}{4}$ degrees west 50 chains; thence north $51\frac{1}{4}$ degrees east 20 chains to the beginning, containing one hundred acres. One hundred and twenty acres in the south corner of donation lot 241. Donation 147, containing 400 acres. Part of lot 3 of fractional section 18 in township 4 north, of range eight west, beginning on the east line of donation lot 147 at the south corner of lot 3; thence north $38\frac{3}{4}$ degrees west 104 poles; thence east 34 poles; thence south 25 degrees east 86 poles to the beginning, containing ten acres. Part of donation lot 148, beginning at the east corner of said donation, thence north $38\frac{3}{4}$ degrees west 50 chains to the north corner; thence south $51\frac{1}{4}$ degrees
46 west 80 chains to the west corner of said donation; thence south $38\frac{3}{4}$ degrees east $42\frac{45}{100}$ chains to a point set seven chains $82\frac{1}{2}$ links north $38\frac{3}{4}$ degrees west from the south corner of said donation; thence north $51\frac{1}{4}$ degrees east $29\frac{88}{100}$ chains; thence north $38\frac{3}{4}$

degrees west $2\frac{15}{100}$ chains; thence north $51\frac{1}{4}$ degrees east $19\frac{38}{100}$ chains; thence south $38\frac{3}{4}$ degrees east ten chains to the donation line; thence north $51\frac{1}{4}$ degrees east $30\frac{34}{100}$ chains to the beginning, estimated to contain $357\frac{84}{100}$ acres. Donation No. 149, except one hundred acres thereof, bounded as follows: Beginning at the west corner of said donation, thence north $51\frac{1}{4}$ degrees east $41\frac{13}{100}$ chains; thence south $38\frac{3}{4}$ degrees east $17\frac{55}{100}$ chains to the centre of the Edwardsport road; thence south $3\frac{1}{4}$ degrees west 8 chains; thence south 82 degrees west $7\frac{52}{100}$ chains to the centre of the Edwardsport road; thence south 13 degrees east $11\frac{87}{100}$ chains; thence south $51\frac{1}{4}$ degrees west $22\frac{32}{100}$ chains to the centre of the Apraw road; thence north $38\frac{3}{4}$ degrees west 27 chains to the beginning. Donations Nos. 153, 154, and 155, and one hundred acres in the south corner of donation 244. And that on said land and leaseholds was situate and sold as aforesaid to the complainants one engine and boiler and hoisting apparatus steam pump, Fairbanks' railroad scales, one wagon scales, four coal screens, one blacksmith shop, one office building, one engine building, and dump-house, one stable, one lime-house, two dwelling-
houses, track in coal mine, also a railroad track, switches,
47 and all fixtures belonging to the coal mine and leaseholds.

And the court further finds that the allegations of said bill of complaint as to the interference with said railroad track, and the taking up of a portion of the rails therefrom, with the intention of taking up the remainder thereof, and of removing and disposing of all the same, are substantially true. And as to the allegations in the amended and supplemental bill contained, the court finds that they are substantially true, and particularly as alleged therein, that the defendant, James H. Shouse, sheriff, as aforesaid, on the 25th day of December, levied on certain property, as in the amended and supplemental bill set forth, and which, at the time of said sale to the complainants, was annexed to and constituted part of said real estate and chattels real, and is part of the property so sold to the complainants, and part of which had been removed from said railroad track, as in the original bill of complaint alleged, and that said sheriff intends to sell the property levied on for the benefit of the executions so levied.

It is, therefore, finally ordered, adjudged, and decreed by the court that the defendants, William Helphinstine, Howard A. Truedley, John J. McLaughlin, Elisha Hyatt, Hiram Hyatt, Albert M. Whitten, and Jared W. Levings, and each of them, their agents, and servants, and all persons acting under their authority be, and they hereby are, perpetually enjoined and restrained from removing or seizing the
iron rails heretofore taken up and detached from said rail-
48 road track, as in the bill of complaint mentioned, and from in any manner impairing the complainants' title thereto acquired by their purchase aforesaid, and from in any manner wasting or injuring any of the property so purchased by complainants at the execution sale aforesaid; and further, that they and the defendant, James H. Shouse, sheriff as aforesaid, and each of them, and all persons acting by authority of them, or any of them, be, and they hereby are, perpetually enjoined and restrained from sell-

ing, in pursuance of the levy made by said sheriff, any of the property so levied on on the 25th day of December, 1877.

It is adjudged and decreed that the complainants recover of the defendants their costs and charges in this behalf laid out and expended, taxed at——

All of which is finally ordered, adjudged, and decreed.

To which judgment and decree, and each and every part thereof, the defendants and each of them jointly and severally except.

And now the said respondents file their written motion to modify this decree before it is entered, and upon the presentation thereof, which is in these words:

"Come the def'ts and move the court to amend and modify the decree rendered by striking out so much thereof as enjoins the sheriff of Knox county from selling all the machinery,
49 buildings, fixtures, and improvements situate on the premises, held under the two Bunting leases read in evidence, because the same were personal property when levied upon under the several executions of the complainants, and said sale thereunder was void because the same were not sold as personal property, but as real property, and, hence, they acquired no title under said sale made at the court-house door.

A. C. HARRIS & WM. ARMSTRONG,
Att'ys for Def'ts."

Praying that it may be amended so as not to enjoin the said sheriff of Knox county from enforcing the said execution against the property levied on, except so much of the iron rails and frogs, &c., as were not situate upon the premises known and mentioned in the pleadings and proofs as the Bunting leases; which motion is overruled and denied, to which each and every of the defendants jointly and severally except.

And now the respondents pray an appeal to the Supreme Court of the United States, which is granted, the matter in controversy exceeding $6,000.00 in value, and defendants are required to file bond in sum of $1,000.00, with security to be approved by the clerk of this court.

50 And afterwards, to wit, at the May term of said court, in recess thereof, on the 8th day of July, 1880, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, by counsel, and file their appeal bond herein in the sum of $1,000, with Jared W. Levings, Hiram Hyatt, Elisha Hyatt, and William R. Thompson as sureties, which is approved by the court, and said bond is in the words following, to wit:

Supreme Court of the United States.

THE VINCENNES NATIONAL BANK, THE WASHINGTON NATIONAL BANK
vs.
WILLIAM HELPHINSTINE, HOWARD A. TREUDLEY, JOHN I. MCLAUGHLIN, ELISHA HYATT, HIRAM HYATT, JARED W. LEVINGS, ALBERT M. WHITTON.

Know all men by these presents, that we, Jared W. Levings, Hiram Hyatt, Elisha Hyatt, William R. Thompson, are held and firmly bound unto the above named The Vincennes National Bank, The Washington National Bank, in the sum of one thousand dollars, to be paid to said The Vincennes National Bank & Washington National Bank; to which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators, jointly by these presents.

Sealed with our seals, and dated this 7th day of July, 1880.

51 Whereas the above-named appellants hath prosecuted this appeal to the Supreme Court of the United States, to reverse the decreed rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana: Now, therefore, the condition of this obligation is that if the above-named appellants shall prosecute their said appeal to effect and answer all costs and damages that may be adjudged or awarded against them, if they shall fail to make good their plea, then this obligation to be void; otherwise in full force.

JARED W. LEVINGS. [SEAL.]
HYRAM HYATT. [SEAL.]
ELISHA HYATT. [SEAL.]
WM. R. THOMPSON. [SEAL.]

Sealed and delivered in the presence of—

Taken and approved before me, this 8th day of July, 1880.

W. Q. GRESHAM,
Dist. Judge.

Here follows the testimony in said cause.

52 And afterwards, to wit, at the November term of said circuit court, on the 17th day of November, 1879, before the Honorable Walter Q. Gresham, judge as aforesaid, the following further proceedings in the above-entitled cause were had, to wit:

Now come the parties, by their respective solicitors, and file their agreement and evidence herein in the words following, to wit:

Be it known, that on the trial of this cause the complainants read in evidence the bill heretofore set out, with the supplemental bill thereto.

The plaintiff then introduced the map, marked A, made by the surveyor of Knox Co., which was agreed to be correct, except that it was agreed no part of the track to the coal mine was on Sec. 28,

but that the mine and all the shafts and mining machinery were on Bunting's land, on Sec. 27, under the terms of the lease hereinafter set out, except so much of the railroad iron as was laid down, or was used, or in or about the track between said section 27 and the I. & V. R. R.

It was also agreed that the leases and deeds hereinafter read, to whomsoever executed or by whomsoever held, were, in fact, the property of the coal mining partnership of Helphinstine & Co., and also that the debt held by the def'ts, Hyatt, Levings & Co., as stated in their answer, was, when created, and ever since had remained, the debt of the said mine, and that the money was borrowed to
53 be used, and was used, by the said mining firm to develop said mine, and that the property levied on by the def't sh'ff under the execution in favor of Hyatt, Levings & Co., the sale of which is sought to be enjoined, was the property of said firm, unless the pl'ffs had acquired title thereto under the sale set forth by their bill.

And thereupon the complainants read in evidence the following:

(Here follows diagram, marked page 53½.)

53½ *Evidence for Plaintiff and Agreement.*

U. S. Cir. Court, Dis. of Ind.

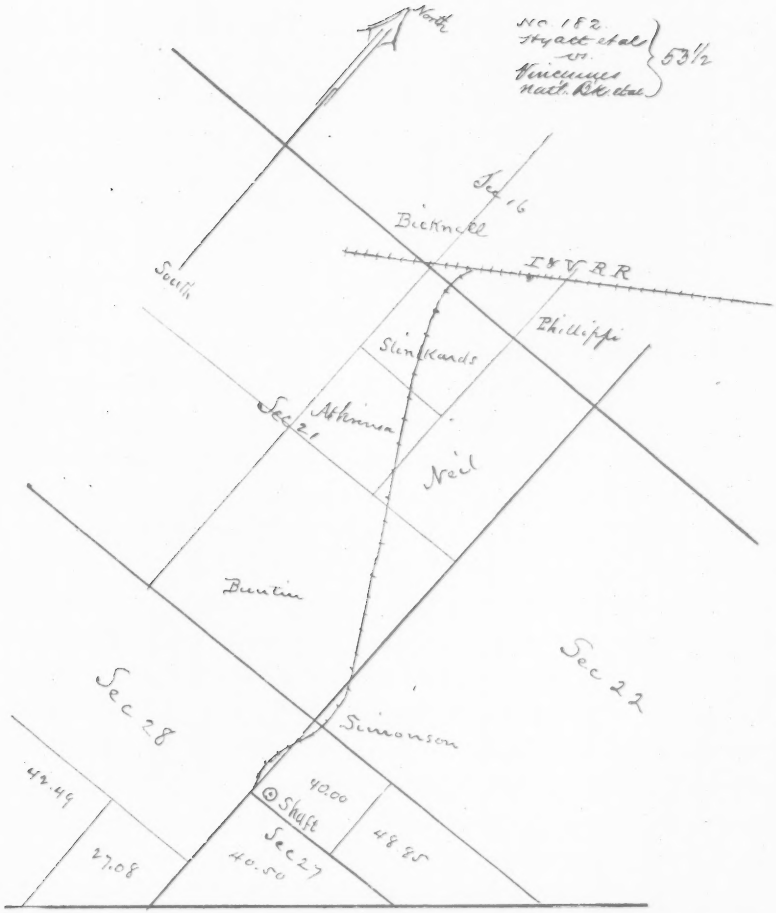
THE VINCENNES NAT. BANK *et al.*
vs.
WILLIAM HELPHINSTINE *et al.*

It is agreed by the parties hereto that the plaintiffs are entitled to a decree as prayed for, unless the property sold should have been sold as personal property, as provided for by the statutes of the State of Indiana; that the sheriff's sale was made at the court-house door, in the city of Vincennes, in Knox county, and more than twelve miles from the property. A copy of one execution and the sheriff's return thereto shall be given in evidence, and the other one dispensed with. It is further agreed that either party may introduce any other evidence tending to show that the property was sold at the proper place or to the contrary.

Sep. 29th, 1879.

VIEHE & EVANS,
Sol. for Pl'ff-.
WM. ARMSTRONG,
Sol. for Defendants.

53¾ Know all men by these presents, that ——, of Vigo township, in the county of Knox, in the State of Indiana, for and in consideration of one dollar to me in hand paid by Wm. Helphinstine & Co., of Washington, Daviess county, Indiana, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the said Wm. Helphinstine & Co., their heirs or assigns, the following piece or tract of land in the county of Knox and State of In-


North
No 182
Hyatt et al
vs
Vincennes
Nat. Bk. case
53½
Sec 16
Bicknell
I & V R R
South
Phillipps
Slinkards
Sec 21
Atkinson
Neil
Buntin
Sec 22
Sec 28
Simonson
42.49
27.08
40.00
Shaft
Sec 27
40.50
48.85

diana, and described as follows, to wit: A strip of land through the S. half of S. E. qr. of section twenty-one (21); the N. half of the east half of the S. E. qr. of section 21, town. 4, range 8 west; west ½ of the N. W. quarter of section 22, town. 4, range 8 west, Vigo Co., Ind., forty feet in width, being twenty feet on either side of the center line of the road of said company, as located by the engineer of said Helphinstine & Co. for the construction of said railway or tramway; to have and to hold the same unto the said Wm. Helphinstine forever: Provided, That in case said company do not construct their road through said tract of land, the same shall revert to and become the property of the grantor, his heirs or assigns.

Witness hand and seal this 15th day of July, 1874.

S. A. BUNTING. [SEAL.]
ELIZABETH BUNTING. [SEAL.]

STATE OF INDIANA, }
Knox County, } *ss:*

On this 15th day of July, A. D. 1874, before me, a notary public in & for said county, personally appeared the said S. A. Bunting & Elizabeth Bunting, his wife, and severally acknowledged that
54 they did sign and seal the foregoing instrument, and that the same is the free act and deed of each of them for the uses and purposes therein mentioned, and desired the same to be recorded as such.

[SEAL.] JOHN R. DAVIS,
Notary Public.

Received for record October 12, 1874, at 3 o'clock p. m.
JAS. J. MAYS, *R., K. C.*

STATE OF INDIANA, }
Knox County, } *ss:*

I, Frederick Hall, recorder in and for said county and State, do hereby certify that the above and foregoing is a true and correct copy of a deed from S. A. Bunting and Elizabeth Bunting to Wm. Helphinstine & Co., as the same appears of record in my office in Deed Record "R," vol. 2, pages 353 & 354.

Witness my hand and official seal, at Vincennes, this 15 day of November, 1879.

[SEAL.] FRED. HALL,
Recorder, Knox Co., Ind.

55 Know all men by these presents that William Simonson, of Vigo township, county of Knox, and State of Indiana, for the consideration of one dollar to me in hand paid by Wm. Helphinstine & Co., of Washington, Daviess county, Indiana, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the said company, their heirs and assigns, the following piece or tract of land in the county of Knox, in the State of Indiana, and described as follows, to wit: A strip of land along the west end of southwest quarter of section twenty-two, town. (4), range 8 west,

and across the S. W. corner of the same, & put at least two water passes or culverts under said tract forty feet in width, being twenty feet on either side of the centre line of the road of said company, as located by the engineer of said company, for the construction of said railway or tramway, to have and to hold the same unto the said company, forever. Provided that in case said company do not construct their road throug- said tract, or shall, after construction thereof, permanently abandon the route through said tract of land, the same shall revert to and become the property of the grantor, his heirs or assigns.

Witness my hand and seal, this 2d day of July, 1874.

his
WILLIAM x SIMONSON.
mark.

Witness:
S. A. BUNTING.

56 STATE OF INDIANA, } ss:
Knox Co., }

On this 2d day of July, A. D. 1874, before me, a notary public in and for said county of Daviess, personally appeared the same William Simonson, and acknowledged that he did sign & seal the foregoing instrument, and that the same is the free act and deed of his own for the uses and purposes therein mentioned, and desired the same to be recorded as such.

[SEAL.] JOHN R. DAVIS,
Notary Public.

Received for record Oct. 12, 1874, at 3 o'clock p. m.
JAS. J. MAYES, *R., S. K. C.*

STATE OF INDIANA, } ss:
Knox County, }

I, Frederick Hall, recorder in and for said county and State, hereby certify the above and foregoing to be a true and complete copy of a deed from William Simonson to Wm. Helphinstine & Co., as the same appears of record in my office, in Deed Record "R," vol. 2, pages 352 & 353.

Given under my hand and official seal, at Vincennes, Indiana, this November 15, 1879.

[SEAL.] FRED. HALL,
Recorder, Knox Co., Ind.

57 Know all men by these presents that I, Samuel W. Slinkard, of Vigo township, Knox county, Indiana, in consideration of one hundred dollars to me in hand paid by Wm. Helphinstine, of Washington, Daviess county, Indiana, the receipt of which is hereby acknowledged, do hereby grant & convey to said Wm. Helphinstine, his heirs or assigns, the following piece or tract of land: Through or across the northwest quarter of the northeast quarter of section twenty-one (21), town. four (4), range eight (8), Knox

county, Indiana, thirty (30) feet wide, being fifteen feet on either side of the center of the line of railroad track from the Indiana creek coal mines to the Indianapolis & Vincennes railroad, as located by the engineer surveying & locating said railroad track across the above-described tract of land; to have & to hold forever unto the said Wm. Helphinstine, his heirs or assigns; provided the said Wm. Helphinstine, his heirs or assigns, do not construct said railroad track through or over said track of land, then the same shall revert to the grantor, his heirs or assigns.

Witness my hand and seal this 31st day of March, 1875.

S. W. SLINKARD. [SEAL.]

STATE OF INDIANA, }
County of Knox, } *ss:*

Before me, John R. Davis, a notary public, this 31st day of March, 1875, personally appeared Samuel W. Slinkard, and acknowledged the execution of the annexed deed.

58 Witness my hand and seal, this 31st day of March, 1875.

JOHN R. DAVIS,
Notary Public.

Received for record, April 12, 1875, at 12 o'clock m.

JOHN J. MAYES, *R., K. C.*

STATE OF INDIANA, }
Knox County, } *sct:*

I, Frederick Hall, recorder in and for said county and State, do hereby certify that the above and foregoing is a true and correct copy of a deed from Samuel W. Slinkard to William Helphinstine, as the same appears of record in my office, in Deed Record S, vol. 2, pages 82 & 83.

Witness my hand and official seal, at Vincennes, Indiana, this November 15, 1879.

[SEAL.]

FRED. HALL,
Recorder, Knox Co., Ind.

59 Know all men by these presents that I, Josiah Phillippi, of Vigo township, Knox county, State of Indiana, for the consideration of one dollar, to me in hand paid by William Helphinstine, of Washington, Daviess county, Indiana, the receipt of which is hereby acknowledged, do hereby grant, bargain, & convey unto Wm. Helphinstine the following-described tract or piece of land, forty feet wide & of sufficient length to make a curve for a R. R. track, curving from the coal mines of Wm. Helphinstine & Co., to enable them to run locomotive & cars from the Indianapolis & Vincennes R. R. track to said mines, it being over a part of a lot of ground in the southwest quarter of the southeast quarter of section (16) sixteen, town (4) four, range (8) eight, Knox county, Indiana, lying south of the I. & V. R. R. & north of the section line, joining James Hoover's land on the west & town of Bicknell on east side of same, to said

Wm. Helphinstine, & his heirs & assigns, so long as used for a R. R. track or switch, & to be used for no other purpose.

In witness whereof, I have hereunto set my hand & seal, this 18th day of March, 1875.

JOSIAH PHILLIPPI.

STATE OF INDIANA, *County of Knox:*

Before me, a notary public, this 18th day of March, 1875, personally appeared Josiah Phillippi, & acknowledged the execution of the annexed deed.

Witness my hand and notarial seal.

[SEAL.] JOHN R. DAVIS,
Notary Public.

60 Received for record April 12, 1875, at 12 o'clock m.
JAS. J. MAYS, *R. K. C.*

STATE OF INDIANA, } *set:*
Knox County, }

I, Frederick Hall, recorder in and for said county and State, do hereby certify that the above and foregoing is a true and correct copy of a deed from Josiah Phillipe to William Helphinstine, as the same appears of record in my office, in Deed Record "S," vol. 2, page 82.

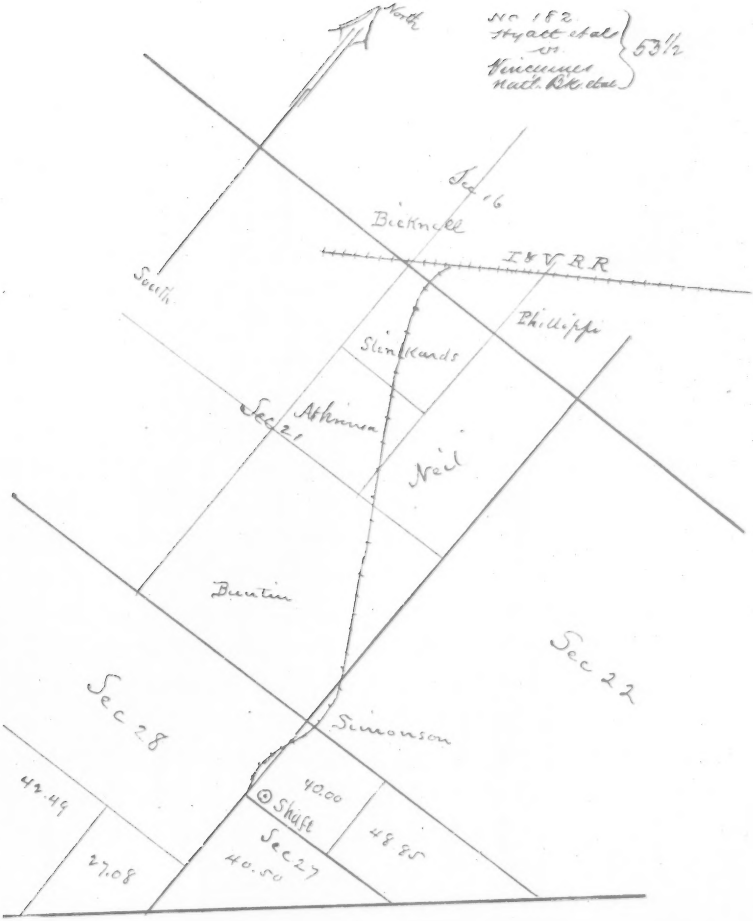
Witness my hand and official seal, at Vincennes, Indiana, this November 15, 1879.

[SEAL.] FRED. HALL,
Recorder, Knox Co., Ind.

Know all men by these presents, that I, Mary Atkinson, of Vigo township, in the county of Knox, and State of Indiana, in consideration of thirty dollars to me in hand paid by Wm. Helphinstine, of Washington, Daviess county, Indiana, the receipt of which is hereby acknowledged, do hereby grant & convey to said Wm. Helphinstine, his heirs or assigns, the following piece or tract of land through the southwest quarter of northeast quarter section twenty-one (21), town four (4), range eight (8), Knox county, Indiana, thirty feet in width, being fifteen feet on either side of the center of the line of railroad track from Indian creek coal mines to the Indianapolis & Vincennes railroad, as located by the engineer surveying & locating said railroad track across the above-described
61 track of land, to have & to hold forever unto said Wm. Helphinstine, his heirs & assigns, provided the said Wm. Helphinstine, his heirs or assigns, do not construct said R. R. track through on said land or track, then the same shall revert back to the original grantor or heirs or assigns.

Witness our hands and seals, this 30th day of March, 1875.

MARY ATKINSON. [SEAL.]
JOHN S. ATKINSON. [SEAL.]


North
No 182
Wyatt et al
vs
Venicunnes
Mach. Blk. Case
53½
Sec 16
Bicknell
I & V R R
South
Phillippi
Slinkards
Athinna
Sec 21
Neil
Buntin
Sec 22
Sec 28
Simonson
42.49
27.08
40.00
Shaft
Sec 27
40.50
48.85

STATE OF INDIANA, } ss:
Knox County, }

Before me, John R. Davis, a notary public, this 30th day of March, 1875, personally appeared Mary Atkinson & John S. Atkinson, her husband, and acknowledged the execution of the annexed deed.

Witness my hand and notarial seal, this 30th day of March, 1875.

[SEAL.] JOHN R. DAVIS,
Notary Public.

Received for record April 12, 1875, at 12 o'clock m.
JAS. J. MAYES, *R. K. C.*

STATE OF INDIANA, } ss:
Knox County, }

I, Frederick Hall, recorder in and for said county and State, do hereby certify that the above and foregoing is a true and correct copy of a deed from Mary Atkinson and John S. Atkinson to Wm. Helphinstine, as the same appears of record in my office, in Deed Record "S," vol. 2, page 84.

Witness my hand and official seal, at Vincennes, Ind., this 15th day of November, 1879.

[SEAL.] FRED. HALL,
Recorder, Knox Co., Ind.

62 Know all men by these presents, that I, Austin Neal, of Vigo township, in the county of Knox and State of Indiana, in consideration of one dollar to me in hand paid by Wm. Helphinstine, of Washington, Daviess county, Indiana, the receipt of which is hereby acknowledged, do hereby grant and convey *to* unto said Wm. Helphinstine, his heirs and assigns, the following piece or track of land: Through the southeast quarter of the northeast quarter of section twenty-one (21), town (4) four, range eight (8), Knox county, Ind., thirty feet in width, being 15 fifteen feet on either side of the center of the line of railroad track from the Indiana creek coal mines to the Indianapolis & Vincennes railroad, as located by the engineer for surveying and locating said railroad across the southwest corner of said track of land for the construction of said railroad, to have and to hold the same unto the said Wm. Helphinstine, his heirs and assigns, forever, provided, that said Helphinstine, his heirs or assigns, do not construct said railroad through said track of land, the same shall revert to and become the property of the grantor, his heirs or assigns.

Witness my hand and seal, this 30th day of March, 1875.

AUSTIN NEAL. [L. S.]

STATE OF INDIANA, } ss:
County of Knox. }

Before me, John R. Davis, a notary public, this 30th day of March, 1875, personally appeared Austin Neal, and acknowledged the execution of the annexed deed.

63 Witness my hand and notarial seal.
[SEAL.] JOHN R. DAVIS,
Notary Public.

Received for record April 12, 1875, at 12 o'clock m.
JAS. J. MAYS, *R. K. C.*

STATE OF INDIANA, } *sct:*
Knox County, }

I, Frederick Hall, recorder in and for said county and State, do hereby certify that the above and foregoing is a true and correct copy of a deed from Austin Neal to Wm. Helphinstine, as the same appears of record in my office, in Deed Record S, vol. 2, pages 83 & 84.

Witness my hand and official seal, at Vincennes, Ind., this 15th day of November, 1879.
[SEAL.]
FRED. HALL,
Recorder, Knox Co., Ind.

Indiana Mineral Contract.

This agreement, made and concluded this the 20th day of July, A. D. 1874, between Samuel A. Bunting & Elizabeth Bunting, of Vigo township, in the county of Knox, in the State of Indiana, of the first part, and Wm. Helphinstine & Co., of Washington, Daviess county, Indiana, of the second part, as follows: The party of the first part, in consideration of one dollar to them in hand paid, the receipt of which is hereby acknowledged, as well as the agreements hereinafter mentioned, does hereby bargain, sell, and convey unto the party of the second part, their heirs, successors, and assigns, for a term
64 of fifty years, all the mineral, coal, iron ore, fire and potter's clay, limestone, building stone, and other minerals upon and under the farm or tract of land in the township of Vigo, in the county of Knox, in said State of Indiana, described as follows, to wit: The N. half of the N. W. quarter of section twenty-seven (27), town 4, range 8, Knox county, Indiana, containing eighty acres, containing in the whole 80 acres of land, granting to the party of the second part, his or their assigns, as well as to his or their laborers and workmen the exclusive right to enter upon said lands at any time hereafter to bore, dig, and search for coal, iron ore, clay, stone, and other minerals as aforesaid, and, when found, to remove the same from said land, together with all rights and privileges incident to mining and securing the minerals aforesaid, including the right of ingress and egress, and to dig, bore, mine, explore, and occupy with constructions and buildings as may be necessary and useful for the full development and enjoyment of the advantages of said coal and other minerals as aforesaid, and the refuse from said mines, and also the right to mine and remove the coal and other minerals aforesaid of adjoining lands and other lands through, over, and under said lands, during the continuance of this agreement.

And the party of the second part agrees, for his or their assigns and workmen, to enter upon and make search for coal and other

articles before mentioned in said lands above described within three years from this date, and to commence working said
'65 coal, iron ore, clay, stone, and other minerals within three years from this date, should said articles aforesaid be found in said lands, of such thickness, quality, and quantity as to justify working the same.

Provided that after the expiration of the said three years aforesaid the said party of the second part, and his or their assigns, in lieu of opening and working the mines, or removing the coal and other articles mentioned, shall pay to the party of the first part, his heirs or assigns, the sum of sixty dollars per annum until mining is commenced, the failure to pay which within one year after demand upon the party of the second part, or his assigns, shall be deemed an abandonment of this agreement or lease.

And the party of the second part, and assigns, shall have the right to remove all buildings or fixtures placed on said land when said agreement has been forfeited or may have expired.

And the said party of the second part, for himself or assigns, agrees to pay to the party of the first part, heirs or assigns, the sum of 12 cents for each ton (of 2,240 pounds) of screened coal mined and removed from said lands, and the price of rent of the iron ore and other minerals mined and removed for such gross ton of 2,240 pounds shall be 10 cents for screened or clean ore and other minerals, and the price for stone shall be 10 cents per perch, and also one-twentieth part of the nett proceeds of the pot-
ter's clay, fire clay, and salines mined and removed
66 from said lands. But [it] is understood and agreed that any advance payment of sixty dollars as before mentioned, to be paid yearly, which shall be made to the party of the first part are to be applied to the payment of rent for any of the aforesaid articles first mined thereafter. The payment of rent as aforesaid shall be made quarter-yearly, and all payments required by this agreement shall be made in bankable funds of the State of Indiana. It is mutually understood by the parties that no mining is to be done under any dwelling-house or permanent building.

It is further agreed that the party of the first part hereby grants and gives to the party of the second part the use of all the land necessary in the above-described premises for the location, construction, and occupancy of a public railroad, together with lateral branches, and also tramroads.

It is also agreed that the stipulations herein shall apply to and bind the heirs, executors, administrators, and assigns of the parties respectively.

In witness whereof the parties hereunto set their hands and seals the day and year first above written.

S. A. BUNTING. [SEAL.]
ELIZABETH BUNTING. [SEAL.]
WM. HELPHINSTINE & CO. [SEAL.]

STATE OF INDIANA, } ss:
Knox County, }

67 On this 21st day of July, 1874, before me, a notary public in and for said county, personally appeared the said S. A. Bunting & Elizabeth Bunting, and severally acknowledged that they did sign and seal the foregoing instrument, and that the same is the free act and deed of them for the uses and purposes therein mentioned.

[SEAL.] JOHN R. DAVIS,
Notary Public.

STATE OF INDIANA, } ss:
Daviess County, }

On this 22d day of July, 1874, before me, a notary public in and for said county, personally appeared the said Wm. Helphinstine & Co., consisting of William Helphinstine, Howard A. Truedly, and Moses L. B. Seifrit, and severally acknowledged that they did sign and seal the foregoing instrument, and that the same is the free act and deed of them for the uses and purposes therein mentioned.

[SEAL.] JOHN R. DAVIS,
Notary Public.

Know all men by these presents that I, Moses L. B. Sefrit, the party of the second part in the within contract described, made by S. A. Bunting and Elizabeth Bunting, as one of the firm of Wm. Helphenstine & Co., to me, on the 20th day of July, 1874, do hereby assign, transfer, and set over the said contract unto John R. Davis, of Washington, Daviess county, Indiana, all my interest in the lease on the following lands: The N. half of the N.W. quarter of sec-
68 tion twenty-seven (27), town. 4, range 8, containing eight acres, with all the property and rights of property, interests, powers, and possessions of every kind therein conveyed to me:

To have and to hold to them, my assignees aforesaid, and to their legal successors in said property and rights, and to their assigns forever, upon condition that the said assignee shall do and perform all the acts and things stipulated in said contract to be done and performed by me, and in case of failure so to do this assignment to be void.

In witness whereof I have hereunto set my hand and seal, this 28th day of August, A. D. 1874.

M. L. SEFRIT. [SEAL.]

STATE OF INDIANA, } ss:
Daviess County, }

On this 28th day of August, 1874, before me personally appeared the said Moses L. B. Sefrit, above named, and acknowledged that he did sign and seal the foregoing instrument, and acknowledged the same to be his free act and deed.

[SEAL.] A. J. MASON,
Notary Public.

The above and foregoing mineral contract and assignment was received for record October 12th, 1874, at 3 o'clock p. m.

JAS. J. MAYES, *R., K. C.*,
By JAS. S. MAYES, *Deputy.*

STATE OF INDIANA, }
Knox County, } *ss:*

I, James J. Mayes, recorder for said county of Knox, hereby certify that the above and foregoing is a true and complete copy of
69 mineral contract and assignment as the same is recorded in my office in Miscellaneous Record No. 1, page 531, 523, 533, & 534.

Witness my hand and the seal of my office January 2d, 1878.

[SEAL.] JAS. J. MAYES, *R., K. C.*,
By H. A. FOULKS, *Deputy.*

THE STATE OF INDIANA, }
Daviess County, } *ss:*

The State of Indiana to the sheriff of Knox county, Greeting:

Whereas the Vincennes National Bank recovered judgment against William Helphinstine, John J. McLaughlin, and Howard A. Truedley on the 7th day of March, 1876, in the Daviess circuit court for five thousand and seventy-five dollars and —— cents, upon which there is due five thousand four hundred and seventy-six dollars and fifty-seven cents, principal and interest, and two dollars and —— cents costs, accrued to this time, all without any relief whatever from valuation or appraisement laws:

You are therefore commanded to levy the said sum of money of the property of the defendants in your county, subject to execution, and have the money at the clerk's office to satisfy said judgment, interest and costs, and return this writ within one hundred and eighty days from the date of the same, with your doings
70 thereon.

In witness of which, I, George S. Walters, clerk of said court, hereunto affix the seal thereof and subscribe my name, at Washington, this 20th day of December, A. D. 1876.

[SEAL.] GEORGE S. WALTERS, *Clerk.*

Endorsement on execution: No. 2329. Circuit court. Judg. D. 2, page 85. Fee book 5, page 420. Ex. Dock. 1, page 181. The Vincennes National Bank *vs.* William Helphinstine, John J. McLaughlin, and Howard A. Truedley. Execution *vs.* defendant. Ju'g't 7 March, 1876, $5,075.00. Interest 20 Decemb., '76, $401.57 Costs, $200. Total, $5,478.57. Interest 10 per cent. No relief from valuation law. Returnable in 180 days from Dec. 20th, 1876. Returned July 5th, 1877. F. W. Viehe, att'y for plaintiff. Sheriff's No. 172.

Return of Sheriff on Execution.

Rec'd this writ Dec. 21st, 1876.

JAS. H. SHOUSE, *S. K. C.*

Be it remembered that by virtue of five executions, to me directed from the clerk of the Daviess circuit court, I have this day, March 29th, 1877, levied on the following-described personal property, to wit: Fifteen miners' coal cars, one bellows and blacksmith tools, two heating stoves; one writing desk, one table, four chairs, one mule, one grindstone and fixtures, levied on as the property of William Helphinstine, John J. McLaughlin, and Howard A. Truedley, for the benefit of this execution, No. 2329, in favor of the Vincennes National Bank, and execution No. 2364 in favor of said National Bank; two executions No. 2334 and 2335, and in favor of
71 the Washington National Bank, and one in favor of Elisha Hyatt *et al.*, and numbered 2341.

JAMES H. SHOUSE, *S. K. C.*

Be it further remembered that I this day, May the 4th, 1877, sold the aforesaid personal property, to wit: 15 miners' coal cars for $150.00, 1 bellows and blacksmith tools for $10.00, 2 heating stoves for $10.00, 1 writing-desk for $3.00, 1 table for $3.00, 4 chairs for $2.00, 1 mule for $20.00, 4 empty barrels and one grindstone & fixtures for $2.00, and the Vincennes National Bank, the Washington National Bank, and Elisha Hyatt *et al.* bought said property. And that being the highest and best bids, and that being the highest and best prices said articles could be sold for, I then and there openly, at public auction, struck off and sold said articles to them, the sale amounting in all to two hundred dollars. Before making said sale, I duly and legally advertised the time and place of making sale for at least ten days next before the day of sale by posting up written notices thereof in three public places in Vigo township, Knox county, Indiana, that I would, on the 4th day of May, 1877, between the hours of ten o'clock a. m. and 4 o'clock p. m., at the coal mine of William Helphinstine & Co., offer for sale at public auction said property.

JAMES H. SHOUSE, *S. K. C.*

Be it further remembered that I this day, May the 17th, 1877, levied on the following-described real estate and chattels real in Knox county and State of Indiana, to wit: Part of donation lot 242, bounded as follows: Beginning at the west corner of the lot, thence north 51¼ degrees
72 east $28\frac{40}{100}$ chains, south 38¾ degrees east $11\frac{87}{100}$ chains, south 51¼ degrees west $14\frac{40}{100}$ chains, south 38¾ degrees east $3\frac{16}{100}$ chains, south 51¼ degrees west $14\frac{40}{100}$ chains to the line of the lot north 38¾ degrees west $15\frac{13}{100}$ chains to the beginning, containing $39\frac{75}{100}$ acres; also parts of survey number one and of the west fractional half of section twenty-five, in township three and four north, of range eight west, described as follows: Beginning at the west corner of the survey, thence south 38¾ degrees east with the survey line $66\frac{30}{100}$ chains to the south corner of the survey; thence north 51¼ degrees east $17\frac{75}{100}$ chains to White river; thence north up the river $1\frac{40}{100}$ chains to a sycamore 30 i. d.; thence north 38¾ degrees west $79\frac{80}{100}$ chains to the line of donation lot 243; thence south 51¼ degrees west $18\frac{68}{100}$ chains to the north corner of donation lot 245;

thence south 38¾ degrees east 13 $\frac{80}{100}$ chains to the beginning; also a part of donation lot 241, bounded as follows: Beginning at a point on the northwest line of the lot at a stake 16 chains from the north corner, thence south 51¼ degrees west 20 chains; thence south 29 degrees east 5 chains; thence north 51¼ degrees east 20 chains; thence north 29 degrees west 5 chains to the beginning.

A strip of ground with a railroad track thereon leading from the Indianapolis and Vincennes railroad at Bicknell to the coal mine of William Helphinstine & Co., the same being in sections 16, 21, and 22, in township four north, of range eight west. The centre line of said railroad is as follows: Beginning on the south line of section 22, twenty-three feet east of the corner of sections 21, 22, 27, and 28, thence
73 curving to the left in a northwesterly direction, with a radius of 1,250 feet, a distance of 255 feet to a stake on the west line of section 22, 250 feet north of the southwest corner of section 22; thence continuing to curve as aforesaid, a distance of 345 feet to the tangent point of said line; thence north 27¼ degrees west 2,290 feet to the north line of the southeast quarter of section 21, 141 feet east of the southeast corner of the southwest quarter of the northeast quarter of said section; thence continuing on the same course 310 feet to a point on the east line of the southwest quarter of the northeast quarter of section 21, 275 feet north of the southeast corner of said quarter of a quarter; thence continuing on the same course 1,123 feet to the north line of said southwest quarter of the northeast quarter of section 21, 562 feet west of the northeast corner; thence on the same course 822 feet; thence curving to the right with a radius of 955 feet, a distance of 655 feet to the north line of section 21, 311 feet east of the northwest corner of said quarter section; thence curving to the right, with a radius of 955 feet, a distance of 400 feet to the Indianapolis and Vincennes railroad. The said strip of ground is forty feet in width, being twenty feet on each side of said centre line through the southwest quarter of the southwest quarter of section 22, the southeast quarter of section 21, and in section 16, and thirty feet in width, being fifteen feet on each side of said centre line through the southeast quarter of the northeast quarter, the southwest quarter of the northeast quarter, and the northwest — of the northeast quarter of section 21.

74 Also the estate, rights, title, and interest of the defendants, William Helphinstine, Howard A. Truedley, and John J. McLaughlin, and each of them, being the residue of terms of years unexpired which they have under certain mining leases in and to real estate in said county, to wit: In the S. ½ of S. E. ¼ of Sec. 16; W. ½ of N. W. ¼ of Section 16; west ½ of S. W. ¼ Sec. 16; S. W. ¼ of S. E. ¼ of Sec. 17; S. E. ¼ of S. W. ¼ of Sec. 17; N. E. ¼ of Sec. 20; S. ½ of S. W. ¼ of Sec. 21; S. ½ of S. E. ¼ of Sec. 21; northeast ¼ of Sec. 21; lots Nos. 1 and 2 (N. W. fr'l ¼) of Sec. 28; W. ½ of N. E. ¼ Sec. 28; S. E. ¼ of N. E. ¼ of Sec. 28; lots 1 and 2 (W. ½ of S. E. ¼) of Sec. 22; lots 1, 2, and 3 of fr'l Sec. 27; lots 3 and 4 fr'l Sec. 28; N. E. ¼ of N. E. ¼ of Sec. 28, excepting therefrom 10 acres conveyed March 20, 1871, by John Phillippi and wife to James S. Little, said

10 acres being in the northeast corner of said tract: all being in township four north of range 8 west.

Seventy-five acres in the north corner of donation 154. 120 acres, part of donation No. 241, beginning at a stone set $13\frac{88}{100}$ chains from the west corner of said donation on a course of south $38\frac{3}{4}$ degrees east; thence south $38\frac{3}{4}$ degrees east 31 poles to a stone; thence north $53\frac{1}{4}$ degrees east 148 poles to a stake; thence north $38\frac{3}{4}$ degrees west 148 poles; thence south $51\frac{1}{4}$ degrees west to a post $91\frac{1}{2}$ poles of the west corner of said lot on a course of north $51\frac{1}{4}$ degrees east from said west corner; thence south $38\frac{3}{4}$ degrees east 72 poles; thence south $51\frac{1}{4}$ [degrees] east $91\frac{1}{2}$ poles to the beginning; estimated to contain one hundred and twenty acres.

Part of donation No. one hundred and fifty-one, beginning at the north corner of said donation, thence south $38\frac{3}{4}$ degrees east
75 50 chains to the east corner of said donation; thence south $51\frac{1}{4}$ degrees west 20 chains; thence north $38\frac{3}{4}$ degrees west 50 chains; thence north $51\frac{1}{4}$ degrees east 20 chains to the beginning, containing one hundred acres; one hundred and twenty acres in the the south corner of donation No. two hundred and forty-one. Donation No. 147 containing 400 acres.

Also part of lot No. 3 of fr'l Sec. 18, T. 4 N., R. 8. W., beginning on the east line of donation No. 147, at the south corner of lot No. 3; thence north $38\frac{3}{4}$ degrees west 104 poles; thence east 34 poles; thence south 25 degrees east 86 poles to the beginning, containing 10 acres.

Part of donation No. one hundred and forty-eight, beginning at the east corner of said donation; thence north $38\frac{3}{4}$ degrees west 50 chains to the north corner; thence S. $51\frac{1}{4}$ degrees W. 80 chains to the west corner of said donation; thence S. $38\frac{3}{4}$ degrees E. 42 $\frac{17}{100}$ chains to a point set 7 $82\frac{1}{2}$–100 chains N. $38\frac{3}{4}$ degrees W. from the south corner of said donation; thence N. $51\frac{1}{4}$ degrees E. $29\frac{87}{100}$ chains; thence N. $38\frac{3}{4}$ degrees W. $2\frac{17}{100}$ chains; thence N. $38\frac{3}{4}$ degrees W. $2\frac{17}{100}$ chains; thence N. $51\frac{1}{4}$ degrees E. $19\frac{38}{100}$ chains; thence S. $38\frac{3}{4}$ degrees E. 10 chains to the donation line; thence N. $51\frac{1}{4}$ degrees E. $30\frac{75}{100}$ chains to the beginning; estimated to contain $357\frac{34}{100}$ acres. Donation No. one hundred and forty-nine, except one hundred acres thereof, bounded as follows: Beginning at the west corner of said donation; thence N. $51\frac{1}{4}$ degrees E. $41\frac{13}{100}$ chains; thence south $38\frac{3}{4}$ degrees E. $17\frac{75}{100}$ chains to the centre of the Edwardsport
76 road; thence S. $33\frac{1}{4}$ degrees W. 8 chains; thence S. 82 degrees W. $7\frac{52}{100}$ chains to centre of Edwardsport road; thence S. 13 degrees E. $11\frac{82}{100}$ chains; thence S. $51\frac{1}{4}$ degrees W. $22\frac{32}{100}$ chains to centre of Apraw road; thence N. $38\frac{3}{4}$ degrees W. 27 chains to the beginning. Donations Nos. 153, 154, and 155, and one hundred acres in the south corner of 244.

On said land and leasehold is situate, and to be sold with them, one engine and boiler and hoisting apparatus, 1 steam pump, 1 Fairbank's railroad scales, 1 wagon scales, four coal screens, one blacksmith shop, one office building, one engine building and dump-house, one stable, one lime-house, two dwelling-houses, track in coal mine; also railroad track, switches, and all fixtures belonging to the

coal mine on said real estate and leasehold, levied on as the property of William Helphinstine, John J. McLaughlin, and Howard A. Truedley, for the benefit of this execution, No. 2329, and one, No. 2364, both in favor of the Vincennes National Bank, of Vincennes, Indiana; two in favor of the Washington National Bank, Washington, Indiana, and No. 2334 & 2335, and one in favor of Elisha Hyatt *et al.*, & No. 2341.

May 17, '77.

JAS. H. SHOUSE, S. *K. C.*
By MARTIN L. SEDDLEMAYER, *Deputy.*

Be it further remembered that afterwards, on the 9th day of June, 1877, at the court-house door in Vincennes, Knox county, Indiana, between the hours of 10 a. m. and 4 p. m., after having given
77 due and legal notice of the time and place of sale by advertisement, for three weeks successively, in the Vincennes Western Sun, a weekly newspaper of general circulation, printed and published in said county, and by posting up printed notices thereof in three public places in each of the townships in which the real estate is situate, and a like advertisement of the door of said court-house, all for at least twenty days before the day of sale, I did offer at public sale the rents and profits for a term not exceeding seven years, first, of the part of donation lot 242, described as containing $39\frac{2}{100}$ acres; then of said part of donation lot 241, beginning at a point on the northwest line, thence S. 51¼ W. 20 chains, S. 29 E. 5 chains, N. 51¼ E. 20 chains, N. 29 W. 20 chains; then of the part of survey one and of the part of the W. fr'c'l Sec. 25; then of the real estate and chattels real levied one; and having received no bids for the rents and profits of any of the property so offered, I then exposed to public sale the fee-simple of the said part of donation lot 242, described as containing $39\frac{2}{100}$ acres, when the Vincennes National Bank and the Washington National Bank bid therefor $50.00, and no person bidding more, I sold the same to them for that sum; then the part of donation lot 241 first above described, when the same parties bid therefor $150.00, and no person bidding more, I sold the same to them for said sum; then said part of survey one and of the west fr'c'l Sec. 25; when the same parties bid therefor $5.00, and no person
78 bidding more, the same was sold to them for said sum; then all the other real estate and chattels real levied on and the improvements thereon, to wit: One engine and boiler and hoisting machine, steam pump, Fairbank's railroad scales, wagon scales, four screens, blacksmith shop, one office building, one engine building and dump-house, one stable, one lime-house, two dwelling-houses, track in coal mine, railroad track, switches, and all fixtures belonging to the coal mine on said real estate and leaseholds, when the same parties bid therefor $9,795.00, and that being the highest and best bid, the same was sold to them. And after paying cost I applied of the sale of the personal property on the principal and interest of this writ $27.75, and of the proceeds of the sale of the real estate I apply the sum of $4,764\frac{41}{100}$, principal and interest, on this

writ. I paid the Vincennes Western Sun Company the sum of $22.00. I paid the clerk of Daviess county the sum of two dollars. The residue I retained, it being my fees, and return this writ not fully satisfied, this 9th day of June, 1877.

JAMES H. SHOUSE, *S., K. C.*

This writ is entitled to credit for proceeds of property sold by sheriff of Daviess county as of date Aug. 26, '76, $458.49.
Dec. 24, '76. F. W. VIEHE, *Att'y.*

We credit this writ $288 7½-100 as of date Nov. 11, '76.
F. W. VIEHE,
Att'y for Bank.

79 VINCENNES NATIONAL BANK
vs.
WM. HELPHINSTINE, JOHN J. MCLAUGHLIN, and H. A. TRUEDLEY.

Received of Jas. H. Shouse, sheriff, on this writ, by purchase of personal property sold May 4, '77	$27 75
Purchase of real estate June 9, 1877	4,764 41
	$4,792 16

Total, four thousand seven hundred and ninety-two $\frac{16}{100}$ dollars.
F. W. VIEHE,
July 2, 1877. *Att'y for said Bank.*

STATE OF INDIANA, } ss:
Daviess County, }

I, George S. Walters, clerk of the Daviess circuit court within and for said county of Daviess, and State of Indiana, do hereby certify that the above, within, and foregoing are true, full, and complete copies of the execution issued, endorsements and return of the sheriff thereon in the foregoing-entitled cause, wherein "The Vincennes National Bank is plaintiff and William Helphinstine, John J. McLaughlin, and Howard A. Truedly are defendants," as the same appear of record and on file in my office, of which I am the lawful custodian.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said Daviess circuit court, at Washington, Indiana, this the 2nd day of January, A. D. 1878.

[SEAL.] GEORGE S. WALTERS,
Clerk Daviess Circuit Court.

80 . Thereupon complainants rested, and the several defendants read their several answers in evidence and rested; and the cause is thereupon submitted for decree.

I hereby certify that the cause was submitted upon the foregoing admissions and evidence, together with the bills and answers.

W. Q. GRESHAM, *Judge.*

81 Supreme Court of the United States.

ELISHA HYATT *et al.*, Appellants.

vs.

THE VINCENNES NATIONAL BANK *et al.*, Appellees.

82 UNITED STATES OF AMERICA.

In the Supreme Court.

ELISHA HYATT, HIRAM HYATT, JARED W. LEVINGS, ALBERT W. Whitter, William Helpenstein, John T. McLaughlin, Howard A. Truedly, and James H. Shouse, sheriff of Knox County, Indiana, Appellants.

v.

THE VINCENNES NATIONAL BANK, of Vincennes, Indiana, THE WASHINGTON NATIONAL BANK, of Washington, Indiana, Appellees.

Appeal from the circuit court of the United States for the district of Indiana, sitting in equity.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The humble petition of Elisha Hyatt, Hiram Hyatt, Jared
83 W. Levings, Albert W. Whitter, comprising the banking firm of Hyatt, Levings & Co., at Washington, Indiana, William Helphenstein, John J. McLaughlin, and Howard Truedly, partners in name of William Helphenstein & Co., and James H. Shouse, sheriff of Knox County, Indiana, appellants in this honorable court and defendants in said circuit court, respectfully show: That they jointly and severally find themselves aggrieved by a final decree made in the circuit court of the United States, in chancery, by his honor, Walter Q. Gresham, sitting as the circuit judge and chancellor, bearing date the 1st day of July, 1880, wherein the said Vincennes National Bank, of Vincennes, Indiana, and the said The Washington National Bank, of Washington, Indiana, were complainants and these appellants were defendants, in this respect, to wit:

On final hearing of said cause upon the bill and supplemental bill, answers and evidence and agreements (all of which are
84 set forth in the record,) it appeared—

1. That heretofore, to wit, on the 7th day of March, 1876, the said the Vincennes National Bank recovered a judgment in the Daviess circuit court of Indiana against said Helphenstein & Co. for $5,075.00, and that at the same time in the same court the said Washington National Bank recovered judgment against the same parties for $5,078.00. That afterwards said banks took out of said court executions on said judgments directed to the sheriff of Knox county, Indiana, and caused said sheriff to levy the same upon certain partnership property of said judgment defendants situate in said Knox county, described in the pleadings and proof, and being in part farms and lands and part coal mining leases or agreements

given and made to and held by said partners of many land owners in said county of Knox, and upon portions whereof, viz.,
85 certain agreements, styled "mineral contracts," made by one Bunting, said partners had opened and developed and were operating a coal mine, and had built dwelling-houses, office buildings, shops, scales, and made other improvements thereunder and about said mine, including railroad tracks, switches, shaft-houses, and other improvements, mining apparatus, and machinery, and that said sheriff advertised and sold all of said property at the door of the court-house of Knox county as real estate on June 9, 1877, to said banks jointly, who took a sheriff's deed therefor, and claimed title to all of said property thereunder, including the property about said mine. That on June 5th, 1877, Messrs. Hyatt, Levings & Co. recovered judgment in said Daviess circuit court against said partners for $6,198.05, on which they took out an execution on December 22, 1877, directed to the sheriff of Knox county, under which, on Dec. 25 following, he levied on certain iron rails, steam-
86 engines and boilers, force-pumps, a large amount of piping, and wire ropes, and other property connected with the mine, wherefore this action was brought to quiet complainants' title, and to enjoin defendants from asserting title to any of the property about the mine. That on the final hearing the main question was whether said banks acquired title to the coal mine property and fixtures situated on and held under the "Bunting mineral contracts," which gave said Helphenstein & Co. and their assigns the exclusive right for 50 years to mine and remove coals from said lands on paying the price of rent of twelve (12) cents for each ton of coal mined and removed from said lands, with the right to erect all necessary structures and machinery; to remove the same when the agreement was terminated by time or forfeiture.

87 It was admitted on the hearing that the coal mine and property was 15 miles distant from the Knox county court-house.

By the law of Indiana real estate is required to be sold at the door of the court-house of the county wherein situated, but personal property must be sold in the presence and view of the officer making the sale.

And appellants show that upon these facts the court on final hearing forever enjoined the defendants from in any manner questioning or impairing the complainants' title to any of the property acquired by their purchase aforesaid, including the property situate upon the Bunting premises, and refused to amend or modify the decree so as to except therefrom the machinery, buildings, fixtures, and improvements situate upon, and held under, the said "Bunting mineral contracts" read in evidence.

88 And your petitioners humbly appeal from that part of the decree of the court which so enjoins them from disputing the title of said banks to that property situate on the said Bunting premises, and from proceeding to sell the same to satisfy the said judgment of Hyatt, Levings & Co., upon the ground that the same is erroneous, for that by the law of Indiana said mining property,

apparatus, and machinery erected and held by said Helphenstein & Co. on and under said "mineral contracts," executed by said Bunting, was, and is, "personal property," and was not and is not "real estate," and, therefore, said banks acquired no title thereto, because the same was not sold as personal property, in the presence of the officer making the sale.

And your petitioners show that, said court awarded an appeal, for that the amount in controversy exceeded $6,000, and that
89 they have executed a bond as by said court required. Your petitioners, therefore, pray that the said decree of the said circuit court may be, in the particulars aforesaid, reversed, set aside, and for nothing holden. And that your petitioners may have such relief in the premises as to this honorable court may seem meet.

And will the court issue the proper writ, directed unto the said The Vincennes National Bank, of Vincennes, Indiana, and The Washington National Bank, of Washington, Indiana, commanding them to be and appear in this court, in this cause, at a day named therein, to answer and show cause why your petitioners shall not have the relief to which they are entitled.

WILLIAM H. CALKINS,
ADDISON C. HARRIS,
WILLIAM ARMSTRONG,
Att'ys for Appellants.

Appeal allowed, this 8th Dec., 1881.

JOHN M. HARLAN,
Associate Justice S. C. U. S., 7th Circuit.

90 And afterwards, to wit, at the November term of said circuit court of the United States for the district of Indiana, on the 26th day of January, 1882, before the Honorable Walter Q. Gresham, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had to wit:

Comes now the defendants, by counsel, and file their bond for appeal herein in the sum of one thousand dollars with Elisha Hyatt, Hiram Hyatt, Jared W. Levings, and William Martin, as sureties thereon, which bond is now approved, and said bond is in the words following, to wit:

91 Know all men by these presents, that we, Elisha Hyatt, Hiram Hyatt, Jared W. Levings, and William Martin, are held and firmly bound unto The Vincennes National Bank and The Washington National Bank, in the full and just sum of one thousand dollars, to be paid to the said Vincennes National Bank and The Washington National Bank, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 22d day of December, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas lately, at a circuit court of the United States for the District of Indiana, in a suit depending in said court, between The

Vincennes National Bank, of Vincennes, Ind., and The Washington National Bank, of Washington, Ind., complainants, and Elisha Hyatt, Hiram Hyatt, Jared W. Levings, and Albert W. Whitter, composing the banking firm of Hyatt, Levings & Co., William Helphinstein, John J. McLaughlin, & Howard Truedly, partners, as William Helphinstein & Co., & James W. Shouse, sheriff of Knox county, Indiana, def'ts, a decree was rendered against the said defendants, having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said complainants, The Vincennes National Bank and The Washington National Bank, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

92

Now, the condition of the above obligation is such, that if the said defendants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

ELISHA HYATT. [SEAL.]
HIRAM HYATT. [SEAL.]
JARED W. LEVINGS. [SEAL.]
WILLIAM MARTIN. [SEAL.]

Sealed and delivered in presence of—
ARNOLD J. PADGET.

Approved by—
NOBLE C. BUTLER,
Clerk of the District Court of the U. S. for District of Indiana.

Approved:
JOHN M. HARLAN,
Asso. Jus. S. C. U. S.

December 28th, 1881.

93 The United States of America to The Vincennes National Bank, of Vincennes, Ind., and The Washington National Bank, of Washington, Indiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Indiana, wherein Elisha Hyatt, Hiram Hyatt, Jared W. Levings, and Albert W. Whitter, composing the banking firm of Hyatt, Levings & Co., William Helfenstein, John J. McLaughlin, & Howard Truedly, partners as William Helfenstein & Co., & James H. Shouse, sheriff of Knox county, Indiana, are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Harlan, Associate Justice of the Supreme Court of the United States, this 28th day of December, in the year of our Lord one thousand eight hundred and eighty-one.

JOHN M. HARLAN,
Associate Justice S. C. U. S.

94 The Vincennes National Bank, of Vincennes, Indiana, and The Washington National Bank, of Washington, Indiana, each hereby waives the service of process herein, and each hereby acknowledges service of the within writ, and enters an appearance to said appeal, the same as if legally served in form and manner prescribed by law.

F. W. VIEHE,
January 23, 1882. *Att'y for said Banks.*

95 DISTRICT OF INDIANA:

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record in the cause of The Vincennes National Bank *et al.*, *vs.* William Helphinstine *et al.*, as fully as the same appears of record in my office.

Witness my hand and the seal of said court, this 26th day of January, A. D. 1882.

[SEAL.] NOBLE C. BUTLER, *Clerk.*

DISTRICT OF INDIANA:

I, Walter Q. Gresham, judge of the district court of the United States for said district, do certify that at the date of the foregoing certificate Noble C. Butler was, and now is, the clerk of the circuit court of the United States for said district, and that his attestation aforesaid is in due form of law.

Witness my hand, this 26th day of January, 1882.

W. Q. GRESHAM, *Judge.*

Endorsed on cover: Indiana C. C. U. S. No. 182. Elisha Hyatt, Hiram Hyatt, Jared W. Levings, & Albert W. Whitter, composing the banking firm of Hyatt, Levings & Co., William Helfenstein, John J. McLaughlin, and Howard Truedly, partners as William Helfenstein & Co., & James W. Shouse, sheriff of Knox county, Indiana, appellants, *vs.* The Vincennes National Bank, of Vincennes, Indiana, and The Washington National Bank, of Washington, Indiana. Filed 31st January, 1882.

113-98

SUPREME COURT OF THE UNITED STATES.

No. 182.

HYATT, LEVINGS & CO., ET AL.

VERSUS

THE VINCENNES NATIONAL BANK, ET AL.

APPEAL FROM CIRCUIT COURT FOR THE DISTRICT OF INDIANA.

BRIEF FOR APPELLANTS.

Hasselman-Journal Co. Print, Indianapolis.

IN THE

Supreme Court of the United States.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

ELISHA HYATT ET AL.
vs.
VINCENNES NATIONAL BANK, ET AL. } No. 182.

APPELLANTS' BRIEF.

I.

STATEMENT.

There is no dispute over the facts in this case. The question is whether the machinery, etc., in a certain coal mine in Knox county, Indiana, was real estate or personal property.

In 1874-5, Helphenstine & Co. opened a coal mine on the lands of one Bunting, situate in section twenty-seven (27), under a lease, and constructed a railroad track from the mine to Bicknell station, about a mile in length, to connect with the Indianapolis & Vincennes Railroad.

As shown by the map given in evidence, and as appears upon all the maps showing the Government surveys and old French donations about Vincennes, section twenty seven (27) is fractional. See map in printed transcript, top page 26½.

Bunting, as appears in the record, owned this fractional section twenty-seven (27), and also the south-east quarter of section twenty-one (21).

On the 20th day of July, 1874, Bunting and wife executed to Helphenstine & Co. a contract, whereby they gave to said firm the right to mine coal on said section and adjoining lands for a term of fifty years, with a further right to erect and maintain all necessary buildings and fixtures for the operation of the mine, which improvements the firm, its successors and assigns, had the right to remove upon the termination of the lease by limitation, forfeiture, or otherwise; and also a further right to the use of all the land necesssary for a public railroad track, with lateral branches and tram-roads used in operating the mine.

It was further stipulated that the firm should pay twelve cents for each ton of screened coal mined and removed from said land as "rent;" payable quarterly. See lease, pp. 32 and 33 of printed transcript.

Helphenstine & Co. opened the mine and erected on Bunting's lands the necessary houses, and put in a large amount of machinery.

The firm became indebted to the said National Banks, and Hyatt, Levings & Co., private bankers, for money borrowed and used in opening and operating the mine.

The members of the mining firm lived in Daviess county. On March 7th, 1876, the Vincennes National Bank recovered a judgment in that county against the firm for $5,075.00; the Washington National Bank for $5,078.00, and Hyatt, Levings & Co. for $5,059.79.

To cure a supposed defect, Hyatt, Levings & Co. afterwards took another judgment for the same debt, which was entered on June 5th, 1877.

The said National Banks caused executions to be issued and delivered to the sheriff of Knox County, who levied the same upon certain lands not connected with the mine. Also on a strip of ground with the railroad track thereon, beginning on the south line of section twenty-two (22) and extending to the I. & V. R. R.

The levy did not assume to cover any portion of the track lying on section twenty-seven (27). See description in printed record, page 37.

Under said writs, the sheriff also levied upon "the residue

of terms of years unexpired, which they have under certain mining leases in and to real estate in said county;" without giving the names of the lessors, or the dates and terms of said leases, but simply describing the lands.

The only description of the Bunting lease is "lots 1, 2 and 3, of fractional section twenty-seven (27)."

Said levy recites: "On said land and leasehold is situated and to be sold with them, one engine and boiler, hoisting apparatus, one steam pump, one Fairbank's railroad scale, one wagon scale, four coal screens, track in coal mine; also railroad track, switches, and all fixtures belonging to the coal mine on said real estate and leasehold," and also certain shops and building, and pump-houses thereon. See printed record pp. 37 and 38.

The levy does not designate on whose land, by words or description, the foregoing property was situate.

Having advertised the lease and mining fixtures and property as "real estate," he sold the same as such at the door of the court house in Vincennes, on the 9th day of June, 1877, to said National Banks, appellees, for the sum of $9.795.00, and executed to the purchasers a certificate of purchase, reciting that such purchasers would be entitled to a deed after the expiration of one year from the date of sale, in the manner provided by law for the sale of lands on execution. See sheriff's return, printed record, page 39. See certificate, printed record, pp. 7, 8 and 9.

In December following, Hyatt, Levings & Co. took out an execution and placed it in the hands of the sheriff of Knox county, who at once levied the same upon certain railroad iron, and also upon the same boiler, engine, scales, screens, track in the mine, and other property in and about the mine.

Thereupon said National Banks brought their bill of injunction against said sheriff, Hyatt, Levings & Co., and Helphenstine & Co., to enjoin the sale.

The several defendants appeared and answered, putting in issue the validity of the sale under which the banks claimed title in so far as related to the property and fixtures placed at the mine on the Bunting premises, under the lease hereinbefore mentioned.

The cause coming on for hearing, the parties stipulated among other things, that the map in evidence, made by the surveyor of Knox county was correct, except that it was agreed no part of the track to the coal mine was on section twenty-eight, but that the mine and all the shafts and mining machinery were on Bunting's land, on section twenty-seven, under the terms of the lease hereinbefore mentioned, and which was given in evidence, except so much of the railroad iron as was laid down or was used in the track between section twenty-seven (27) and the I. & V. R. R. For stipulation, see printed record, pp. 25 and 26.

It was further agreed that the execution sale under which the complainants claimed title, was made at the court house door in the city of Vincennes, more than twelve miles distant from the property, and that they were entitled to a decree unless the property in controversy, levied on in favor of Hyatt, Levings & Co., was "personal property" and not "real estate." See printed record, p. 26.

On the hearing the Court decided as matter of law, that the interest of Helphenstine & Co., under the Bunting lease, at the date of the execution sale, was real estate, and that the machinery and the like at the mine at the time of the sale constituted part of the real estate, and accordingly entered a decree perpetually enjoining the sheriff and other defendants from asserting any title to the property whereon they had levied.

Thereupon the defendants moved the Court to so amend the decree as not to enjoin the said sheriff from enforcing said execution against the property levied on by him, except as to so much of the iron rails and frogs, etc., as were not situated upon the premises, known and mentioned in the pleading and proofs as the Bunting lease. This motion was overruled and exceptions reserved. Printed record, p. 24.

II.

Argument.

It is unnecessary to inquire what estate Helphenstine & Co. had in that part of the railroad track lying between section twenty seven (27) and Bicknell. The controversy is

The error assigned is that the court erred in holding that the Bunting lease and improvements was real estate and in enjoining the appellants from proceeding with the sale under the levy

narrowed in this case to the property belonging to the mine situated on Bunting's land under the terms of the lease read in evidence.

The rule governing execution sales of property in Indiana, both real and personal is, that if the officer in making the sale violates any positive provision of the statute, the sale is absolutely void. No suit is necessary to set aside the sale but the validity is triable in any action when the title is put in issue.

Especially is this so when the execution plaintiff is the purchaser and a party litigant. In such case he is himself chargeable with notice of all irregularities in the proceedings, whether he had actual notice or not.

Doe v. *Collins*, 1 Ind. 24.
Harrison v. *Doe*, 2 Blackf. 1.
Raub v. *Heath*, 8 Blackf. 576.
Hamilton v. *Burch*, 28 Ind. 233.
Piel v. *Brayer*, 30 Ind. 333.

This rule is settled by a line of authorities. Thus the statute requires that personal property shall be advertised ten days before the day of sale. A sale on nine days' notice only is void.

Keen v. *Preston*, 24 Ind. 395.

Again, the statute requires that personal property shall not be sold unless the same shall be present and subject to the view of those attending the sale.

An officer gave notice for the required time, but sold the property at a place from one to two hundred rods distant and entirely out of sight of those attending the sale, and the Court held that the sale was void, although the officer made it honestly and without any purpose of committing a fraud.

Gaskill v. *Aldrich*, 41 Ind. 338.
Murphy v. *Hill*, 77 Ind. p. 131; Freeman Ex. Sec. 217.

It is established beyond further discussion by a long line of cases in this State, that any omission or violation of the directions given by statute governing execution sales, renders the same void.

Reed v. *Carter*, 1 Blkf. 410.
Reed v. *Carter*, 3 id. 376.

Kiser v. *Ruddick*, 8 Blkf. 383.
Sherry v. *Nick of the Woods*, 1 Ind. 576.
Benton v. *Shreeve*, 4 Ind. 66.
Swope v. *Ardery*, 5 Ind. 213.
Reed v. *Diven*, 7 Ind. 189.
Davis v. *Campbell*, 12 Ind. 192.
Banks v. *Bates*, 16 Ind. 423.
Lashley v. *Cassell*, 23 Ind. 600.
Catlett v. *Gilbert*, 23 Ind. 614.
Tyler v. *Wilkerson*, 27 Ind. 450.
Hamilton v. *Burch*, 28 Ind. 233.
Piel v. *Brayer*, 30 Ind. 332.
Wright v. *Yetts*, 30 Ind. 185.
Voss v. *Johnson*, 41 Ind. 19.
Bardeus v. *Huber*, 45 Ind. 235 and *S. C.* 60 Ind. 132.
Whisnand v. *Small*, 65 Ind. 127.
Freeman Ex., Secs. 258-9.

If the interest of Helphenstine & Co., under the Bunting lease including the improvements and fixtures was "real estate," then it is agreed by the stipulation that the two banks acquired the title at the sheriff's sale at the court house door on the 9th day of June, 1877.

If the property levied on by the sheriff, under the writ of execution in favor of Hyatt, Levings & Co. was not "real estate," then it necessarily follows that the appellees acquired no title thereto.

This question must be determined by the terms of the Bunting lease given in evidence and found on page 32 of the printed record.

It is entitled an "Indiana Mining Contract." In the body of the instrument it is styled as "an agreement or lease."

It is provided that Helphenstine & Co., or their assigns, shall make search for coal and commence working the mine within three years if it be found of sufficient thickness, quality and quantity to justify it. That after the expiration of three years, if the search has not then been made, they shall pay $60 per annum until mining is commenced, and thereafter they should pay twelve cents per ton for coals mined and removed from said lands. And any $60 payments made

before mining was begun and coals removed were "to be applied to the payment of "rent" for any coal first mined thereafter.

It is next stipulated that the payment of "rent" as aforesaid, "shall be made quarter-yearly."

It is then provided that the lessees shall have the use of all the lands necessary for the location, construction and occupancy of a public railroad together with lateral branches and also tram-roads. This right to mine coal is stipulated to be "for a term of fifty years," which term might be forfeited by a failure to pay the $60 within one year after demand in case the mine was not opened within three years.

It is further provided that the lessees "shall have the right to remove all buildings or fixtures placed on said land when said agreement has been forfeited or may have expired"

There are no words of inheritance to be found in the instrument.

The lessees simply had the *right* to enter upon the lands, search for, and, if they found, mine the coal and appropriate the produce on payment of the stipulated rent quarterly.

They acquired no property in the coals till they were severed from the land. In the case of *Knight* v. *Indiana Coal and Iron Co.*, 47 Ind. 105, the Court defined the character of an instrument very similar to this to be a lease. In that the term was not limited; in this, as we have seen, it is fixed at fifty years. It will be found by comparison that the two instruments are so nearly similar, that we may well conclude the same blank was used in each case.

See also *Tarvin* v. *Risher*, 52 Ind. 389. Almost similar contracts were held to be leases in *McDowell* v. *Hendrix*, 67 Ind. 513; *The Watson Coal and Mining Co.* v. *Casteel*, 73 Ind. 296.

This being so, it only remains to show that by the law of Indiana the interest of Helphenstine & Co. was "personal property" and not "real estate."

III.

A Leasehold for a Definite Term is Personal Property.

The Supreme Court of this State have always decided that a leasehold was personal property.

In 1821, the Court decided that a term of years, on the death of the lessee, passed to his personal representative.

Duchane v. *Goodtitle*, 1 Blackf. 117.

In 1842, the question arose whether a constable could sell a term for years. The statute then in force provided that executions issuing out of a Justice's Court should become a lien on the *personal* property of the judgment debtor, and authorized the constable to sell the goods and chattels. R. S. 1838, p. 373. It was decided that a sale of a term for years by a constable was valid.

The Court say:

"Every species of property comprehended under the general name of chattels, is by the statute made liable to execution on a judgment rendered by a justice. A term of years is a chattel interest. Upon the death of the tenant it does not descend to his heir, but goes to his executor. In the division of property into real and personal, it is classed among the latter."

Barr v. *Doe*, 6 Blackf. 334.

In 1860, the Court again decided that "A lease for a term of years is personal property;" and therefore a vendor of a term for years had no lien thereon for the unpaid purchase money, upon the leasehold or improvements thereon.

Cade v. *Brownlee*, 15 Ind. 369.

In 1863, the Court took occasion again to state the law as follows:

"A lease for years is a chattel real, and being less than a freehold, wanting duration as to time, is considered as personal estate or property; and under our statute is not included under the word 'land' or the phrases 'real estate,' or 'real property;' (2 G. & H. 336) but is included in the phrase 'personal property;' that is, 'chattels,' are so included without distinction being made between real and personal chattels."

Meni v. *Rathbone*, 21 Ind. 466–7.

In 1871, a case came before the Supreme Court wherein suit was brought by an administrator to recover the value of certain crops and the leasehold whereon they were grown, against one who by force had taken possession of the premises held under a lease to the intestate.

The Court say:

"There is no doubt as to the right of the administrator to maintain the action for the wheat, barley, parsnips and other vegetables described in the complaint. But the action is also brought for the value of the unexpired term of the leasehold."

"Could the appellee as administrator maintain an action for an injury to this leasehold? The solution of this question depends upon the question whether the leasehold was personal property or real estate. If it was personal property, then the action was properly brought; but if it was real estate, then the administrator could not maintain the action unless it was shown that it was necessary for the payment of the debts of the estate. Terms for years are treated in law as chattels and go to the administrator as assets." 2 William's Executors, 1497. They are to be inventoried and sold as personal property. The administrator may also assign and underlet the premises or any part thereof, if not prohibited by the terms of the lease; and before sale he has full powers to take possession and manage the estate, accounting to the estate for the profits." 2 William's Executors, 844 and 845. "And he can maintain a suit for possession against one who has wrongfully taken possession." 1st William's Executors, 601. "It is then, we think, well settled by the authorities, that an administrator could maintain an action for an injury that might be done to the leasehold estate. * * * Under our statute it was the duty of the administrator to inventory and appraise this lease, which was assets in his hands for the payments of the debts." *Smith* v. *Dodds*, 35 Ind. 452–456.

In 1881 the precise question again came before the court in the case of *Schee* v. *Wiseman*, 79 Ind. 389, upon a mining lease, for the period of twenty years. The action was by the widow, heirs and administrator of the lessee to enjoin the defendant from working the mine, alleging he was a trespasser. The Court say:

"We are met at the threshold of this case with the proposition that, on the facts stated the right of action was alone in the administrator, and not in the widow and heirs of the deceased, and therefore that the demurrer to the paragraph should have been sustained.

"This position is well taken. * * The leasehold estate was personal property, and upon the death of McQuilken (lessee) the title to it passed to his administrator and became assets, and did not go to the widow and heirs. See *Smith* v. *Dodds*, 35 Ind. 452; *McDonell* v. *Hendrix*, 67 Ind. 513."

This case was decided since the hearing of the case at bar. In 1882 the Court again said:

"A leasehold estate is a chattel." *McCarty* v. *Burnet*, 84 Ind. 26.

It thus appears that the Court has continuously held the law to be that terms for years are "personal property."

So, things set up by a lessee for purposes of trade, or under an agreement that they may be removed, are "personal property."

Taffe v. *Warrick*, 3 Blackf. 111.
McCracken v. *Hall*, 7 Ind. 30.
Frederick v. *Devol*, 15 Ind. 357.

State v. *Benham*, 18 Ind. 231.
Cromie v. *Hoover*, 40 Ind. 56.
Young v. *Baxter*, 55 Ind. 192.
See also *Foy* v. *Reddick*, 31 Ind. 415.
McCarty v. *Burnett*, 84 Ind. 27.

There is no case holding that terms of years are "land" or "real estate," and so have all our text writers written.

A constable has never been authorized to sell real estate in Indiana, but he might always sell personal property. In 1842 Wick and Barbour published a treatise in which it was said: "A leasehold for years being a mere chattel interest, like other chattels, may be taken and sold under a writ of *fieri facias*" by a constable. Wick & Barbour Treatise, p. 303.

In 1856, Hon. David McDonald wrote a treatise on our law which has long been a hand-book for justices and constables. In speaking of constables' sales he said: "Not only what is generally termed personal chattels—as goods, horses and the like, are subject to execution, but chattels real, also—such as the interest of a tenant for a term of years in real property." McDonald's Treatise, p. 232.

He prepared a form of a bill of sale of such an estate made by a constable. Id. p. 253.

Judge Iglehart revised this book; adopted the same language and form. See Iglehart's Treatise, pp. 254-5, 277.

In 1862 John D. Howland wrote a Manual for Probate Officers, which was revised by F. Winter in 1879. It is said:

"Ordinary leases are chattels real, and, upon the decease of the tenant, go to his executor or administrator. Indeed all interests of a less dignity than estates for life, including all interests of a definite period of time measured by years, months and days are deemed chattel interests. Thus a lease for one hundred years in a chattel interest, and upon the decease of the tenant passes into the hands of the executor or administrator like other personal property." Ind. Ex. Man. p. 53.

It would seem to follow without further discussion that the mining fixtures in dispute were "personal property" and that the sale thereof as "real estate" was void.

It can not be said that the coal mine was an appurtenance to the track leading to Bicknell, and passed as an incident. Rather the track was auxiliary to the mine. Besides the strip of land on which the track was laid was specifically described

in the levy under which the appellees claim title, as being in sections 16, 21 and 22 (while the mine was in section 27) and "beginning on the south line of section 22" and running north by designated courses and distances to the I. & V. R. R. Printed Rec. p. 37.

By reference to the map it will be seen that section 27 lies south of section 22.

Only one other question can possibly arise. It was contended below, and will be advanced here that the statutes of Indiana regulating sales on execution direct this class of "personal property" to be sold as "real estate."

This position is predicated upon certain sections of the code of 1852, in force at the time of the sale at the court house in Vincennes.

It is well known to the legal profession of this state that that code was hastily prepared. The framers were conscious of this, and undertook to cure errors in the use of improper words and phrases by a definitive article at the close, declaring the meaning of many terms used.

In this article (Article 48) it is declared: "The word 'land' and the phrase 'real estate' and 'real property,' includes lands, tenements, and hereditaments. The phrase 'personal property' includes goods, chattels, evidences of debt, and things in action."

The Supreme Court decided, in 1863, that the word "chattels," as used in the code, included chattels real. *Meni* v. *Rathbone*, 21 Ind. 466.

The old code was divided into 48 articles. Article 22 is entitled "Executions." Section 466, found in said article, provided as follows:

"Real estate taken by virtue of any execution, shall be sold at public auction at the door of the court house of the county in which the same is situate." * * * 2 R. S., 1852, p. 141.

Section 469 provided as follows:

"Personal property shall not be sold, unless the same shall be present and subject to the view of those attending the sale." * * * 2 R. S., 1852, p. 143.

It will thus be seen that the code fixed the place of sale of "real estate" at the court house; and "personal property" in the presence of the officer and others attending the sale.

Other sections under the same article provided different regulations for giving notice of the sale and the like. Section 463 provided:

"The estate, or interest of the judgment debtor in any real estate, shall not be sold on execution until the rents and profits thereof for a term not exceeding seven years shall have been first offered for sale at public auction." R. S. 1852, p. 140.

And the 465 Section provided that "in case of a sale of the rents and profits for seven years, or less, the sheriff should execute a lease to the purchaser."

Passing, now, to Article 24 of the same code, we find that it relates to judgment liens and the restitution of real estate wrongfully sold on execution. By Section 527, found under said article, it is declared that "judgments shall be a lien upon real estate and chattels real."

Appellees insist that it thereby appears that it was the intention of the legislature that chattels real should be sold as real estate. There are many sufficient answers to this position. If the framers of the code included chattels real in real estate, then they were guilty of tautology in saying that judgments should be a lien "on real estate and chattels real."

If this leasehold was real estate at the time of the sale, and, therefore, properly sold at the door of the court house, then the owner was entitled to keep possession for one year, and the right of redemption for that time attached, under the law of 1861, then in force. See Acts of 1861, S. S. p. 79.

In *Buhl* v. *Renyan*, 11 Mich. 249, a term for years was sold upon execution in accordance with the statutory provisions for the sale of real estate. The Michigan statutes were almost similar to the law of Indiana.

In an action of ejectment by the purchaser, it was held that no title passed. "Such interests," the court say, "have always been sold as personalty on common law executions, and it would require plain language to deduce an intent to make them disposable otherwise. * * * The statutory provisions governing real estate sales are not compatible with the idea that these can be included within them. There are multitudes of cases for short periods, where a sale would be entirely nullified by a fifteen month's period of redemption. The whole machinery for land sales is devised with a view to

reach freehold estates. The lands are sold in parcels, the papers are filed in the office of the register of deeds, successive sales may be had of the rights to redeem, and various other incidents—all inconsistent with any such interests as is here in question—show that the property sold as real estate is an estate of more permanent character, and involving a different kind of ownership."

The Court add:

"A sale on execution is designed to produce the best price which can be obtained; and a sale on condition that no title shall vest for fifteen months, would, under ordinary circumstances, render a lease nearly valueless, besides involving the danger of forfeiture. No bidder would give for the shortened term the value of the full term."

This reasoning is so clear and cogent that we adopt it as a part of the argument, with the additional remark, that the provisions of the code of 1852, declaring that judgments should be a lien on chattels real as well as real estate, had long been the law of Indiana. See R. S. 1843, p. 454, Sec. 3.

A judgment lien is entirely the creature of statute. Overton on Liens, Section 255.

Gimble v. *Stolte*, 59 Ind. 446.

Houston v. *Houston*, 67 Ind. 276.

The legislative power is as ample to make it attach upon personal property as real estate; and so it will be found in many States. *Brown* v. *Clark*, 4 Howard 12.

In this State under the R. S. 1843, Sec. 380, p. 744, it was enacted that in all suits upon official bonds, the lien attached on the real and personal estate of the defendants from the time of bringing the action.

The legislature might well declare a judgment should be a lien upon all, or upon certain classes of personal property, as horses, cattle and the like.

If so, no one would be bold enough to say that such property must be sold as "real estate," because like real estate it was subject to the lien of a judgment.

It is apparent, therefore, that any enactment regulating judgment liens does not in any wise alter the natural character of property or classify personal property for any purpose as real estate.

It follows therefore, that each class of property must be sold in accordance with the statutory regulations governing the particular class, regardless of the question whether the judgment is or is not a lien thereon. It would be a legal anomaly to declare that chattels real are personal property for some purposes and real estate for other purposes.

Thus, an administrator is no less an officer of a court than the sheriff. In this State the circuit courts transact the entire business, probate, criminal and civil, so that an administrator and sheriff are the officers of the same court.

We have already seen that the Supreme Court have expressly decided that an administrator takes and disposes of chattels real as personal property. Nothing but an explicit statutory declaration would induce a court to hold that a sheriff should take and dispose of it as real estate.

Appellants may farther insist that section 526 under said Article 24, supports their contention. That section is as follows:

"Section 526. The following real estate shall be liable to all judgments and attachments and to be sold on execution against the debtor owning the same, or for whose use the same is holden, viz:

"1st. All lands of the judgment debtor, whether is possession, reversion or remainder.

"2d. Lands fraudulently conveyed with intent to delay or defraud creditors.

"3d. All rights of redeeming mortgaged lands; also, all lands held by virtue of any land office certificate.

"4th. Lands and any estate or interest therein held by any one in trust or for the use of any one.

"5th. All chattels real of the judgment debtor." R. S., 1852, p. 153.

The manifest intention of this section of the code was to declare what property, inhering in or arising out of lands, might be taken on execution.

Without legislative authority, the second, third and fourth classes could only be reached in equity. The first and fifth could always be sold under a common law writ; the first as realty, the fifth as personalty. Freeman, Ex. Sec. 119.

This section does not assume to define the place or manner of selling the property, but leaves those questions to be determined by the provisions found under Article 22, set out above.

This section does not enact that chattels real shall be

advertised in the same manner and sold at the same place as lands. It only declares that terms of years are subject to attachment and execution. In this it simply re-enacted the law as it then existed.

The plain meaning of the section is, the property of a judgment defendant, if held in either of the ways enumerated, shall be liable to be sold on execution, issuing upon judgments or attachment proceedings. If that interest is real estate within the definitive section 787, then it must be advertised and sold as real estate according to section 466. But if it is personal property, then according to sections 468 and 469

In speaking of terms of years, the Supreme Court has lately said:

"It is not the less a chattel interest, because it belongs to the class which Blackstone characterizes as 'that kind of property being of a mongrel amphibious nature, originally endowed with only one of the characteristics of each species of things, the immobility of things real, and the precarious duration of things personal.'"

McCarthy v. *Burnett*, 84 Ind. 26.

Mr. Freeman, in his Treatise, says:

"A term of years in real estate was always by the common law regarded as a chattel. It was transferred as personal and not as real estate. In this respect there was no difference between voluntary and involuntary transfers. Hence a leasehold interest in lands for whatever term of years it may continue, must, unless some statute directs otherwise, be levied upon and sold as personal property."

Freeman on Ex. section 119.

In some States of the Union long terms are made estates of inheritance, but there is no similar statute in Indiana. However the question has arisen in this State, terms of years have always been held to be personal property. It therefore necessarily follows that when sold upon execution, they must be sold in accordance with the statutory regulations governing sales of personal property.

Thus leaseholds are transferrable by assignment and pass to the personal representative. So where a tenant makes improvements for his own use with the right of removal, they are personal property.

Price v. *Malott*, 85 Ind. 269, and cases cited.

So where a dwelling house was erected on a street and was permanently attached to another house built on private property, it was held that the former was not an appurtenance to the latter, and was properly sold on execution as personal property.

Foy v. *Reddick*, 31 Ind. 414.

So also *Griffin* v. *Ransdall*, 71 Ind. 440.

So when the common law rule prevailed in this State that a husband upon reducing his wife's personal property to possession, made it his own, it was held that the husband by taking possession and control of a leasehold held in the name of the wife, made it his own, and it thereby became subject to sale on execution against him.

And in support of the position that a chattel real is personal property, the Court cited that provision of section 797 of the code which declares that the phrase "personal property" includes chattels real, etc., and say:

"A lease for years is a chattel real, being less than a freehold, wanting in duration as to time, is considered as personal estate or property. (Black. Comm. 2d Book, 386) and under our statutes is not included under the word land, or the phrase real estate or real property." *Meni* v. *Rathbone*, 21 Ind. 466.

The power of the legislature is unrestrained in regulating execution sales.

The legislature might direct that all personal property should be sold at the court house. So also that real estate sales should be had on the land. Or that certain species of personal property should be sold at the court house and others in the personal presence of the officer.

In the case at bar the statutory regulation in force at the time of the sale required personal property of every kind to be sold in the presence of the officer and others attending the sale. The property of Helphenstine & Co., being personal property, it follows that the sale at the court house, twelve miles distant, as land, was void.

Without extending this argument to greater length, we beg leave to refer to the following authorities, in support of the views we have sought to express:

Herman Ex., Secs. 115-116-127-129.

People v. *Westervelt*, 17 Wend. 674.

The Mayor v. *Mabie*, 13 N. Y. pp. 158-9.
Gay's case, 5 Mass. 419.
Chapman v. *Gray*, 15 Mass. 445.
Bisbee v. *Hall*, 3 Ohio, 449.
McLean v. *Rockey*, 3 McLean, 235.
Herman Ex. Sec. 217.
Crocker Sheriffs, Sec. 495.
Guinn Sheriffs, 247-249.
Curtis v. *Riddle*, 7 Allen 187.
Hunt v. *Bay State Iron Co.*, 97 Mass. 282.
State v. *Bonham*, 18 Ind. p. 233.
Van Ness v. *Pacard*, 2 Pet. 137.
Sowers v. *Vic*, 2 Harris, 99.
Williams v. *Downing*, 18 Pa. St. 62.

The property at the mine being personal estate, it must follow that it could only be sold under execution as personal property.

We respectfully ask that the cause be reversed.

ADDISON C. HARRIS,
WILLIAM H. CALKINS,
Attorneys for Appellants.

WM. ARMSTRONG, *of Counsel.*

November 18, 1884.

Reply Brief.

We venture to notice two or three errors into which appellee's counsel has inadvertently fallen.

1. The case of *Johnson* v. *Briscoe*, 92 Ind. 367, (appellee's brief, p. 24), arose under the new redemption law of April 11, 1881. Acts of 1881, p. 593. By reference to sections one and two it will appear that it was then enacted that the execution defendant was entitled to hold possession and redeem under a sale of any time for years. As the sale was made after this law took effect the purchaser of a term of seven years could not maintain ejectment pending the year. Under the old law, on a sale of rents and profits, the Sheriff immediately executed a lease. 2 R. S. 1852, p. 140, Sec. 465.

2. Counsel is in error in suggesting that the sale of the leasehold was made upon the execution of Hyatt, Levings & Co. as well as the appellees. (Brief, p. 19.) Hyatt, Levings & Co. took their second judgment on June 5, 1877. The sale was had on June 9, 1877. This nullified the first execution. Moreover, Helphenstine & Co. contest the validity of the sale as well as Hyatt, Levings & Co.

3. There is nothing in the case to support the statement of the counsel that "the track without the mine was worthless, and the mine without the track was of no value."

Besides, if an execution defendant owns one-half of a farm or block in fee, and holds a term in the remainder, it is not believed the Sheriff can sell both interests, either as real estate or personal property. Thus, where a Sheriff sold a factory which was real estate, and personal property therein (machinery) together, the sale was held void, "because the Sheriff sold the machinery at Troy, six miles distant from the place where the property was at the time; and because he sold the factory and machinery jointly together without any discrimination." *Cressen* v. *Stout*, 17 Johns. 122.

Respectfully,

A. C. HARRIS,
W. H. CALKINS.

December 8, 1884.

113-408

Supreme Court of the United States,

OCTOBER TERM, 1884.

No. 182.

ELISHA HYATT, et. al.

vs.

THE VINCENNES NATIONAL BANK, et. al.

APPELLEES' BRIEF.

Supreme Court of the United States,

OCTOBER TERM, 1884.

No. 182.

ELISHA HYATT, et. al.

vs.

THE VINCENNES NATIONAL BANK, et. al.

Elisha Hyatt, Hiram Hyatt, Jared W. Levings and Albert M. Whitten were bankers, and transacted their business under the firm name of Hyatt, Levings & Co. William Helphenstine, John J. McLaughlin and Howard A. Truedley were partners under the name of Wm. Helphenstine & Co. As partners they owned, in Knox county, Indiana, a coal mine, and a railroad track a mile and a half in length, constructed in the usual way of building railroads, and extending from the mine to the Indianapolis and Vincennes Railroad. The track was used for conveying the coal mined to the I. and V. Railroad for shipment.

They also owned, in connection with the mine, certain mining rights or leases.

On the 7th day of March, 1876, The Vincennes National Bank recovered, in the Circuit Court of Daviess County, Indiana, judgment against the firm of Wm. Helphenstine & Co. for $5,075. On the same day The Washington National Bank, in the same Court, recovered against that firm judgment for $5,078. At the same time Hyatt, Levings & Co., in said court, recovered judgment against Helphenstine and McLaughlin, two members of Wm. Helphentine & Co., on a debt of that firm, for $5,059.70. All these judgments were rendered by default for failure of the defendants to appear. Other judgments were rendered against the same parties, but only one of these is material in this appeal; and this one will hereafter be noticed.

In each of the three cases summons had been served on Friday, the 25th of February, 1876, requiring the defendants to appear on the second day of the then next term, which commenced on Monday, the 6th of March, 1876. The statute required summons to be served ten days before the first day of the term of court. That service on Friday, when the term commenced a week after the next Monday, makes, ordinarily, the ten days' service required, has long been settled.

Womack v. McAhren, 9 Ind., 6.

An execution was issued on each of the three

judgments above set out and directed to the Sheriff of Knox county, who levied them on the coal mine property, including the track to the mine and the ground on which it had been constructed, and on the mining leases and all the property pertaining to, or used in connection with, the coal mine. On the 9th day of June, 1877, at the court house door of his county, a distance of twelve miles from the track and the other property, he sold the same to complainants as an entirety and as by law *real estate* is directed to be sold.

On the 5th day of June, 1877, Hyatt, Levings & Co., treating their former judgment as void, recovered in the Daviess Circuit Court, for the same cause of action on which they had already recovered as before stated, judgment for $6,198.05. On this, their second judgment, and after the coal mine property had been sold by the Sheriff, they procured an execution to be issued, and they had the same placed in the hands of the Sheriff of Knox county on the same Sunday on which Mr. Helphenstine tore up the track, as hereinafter stated.

This execution was, two days thereafter, levid on the rails, &c., which had been removed from the road bed. This property was seized as the personal property of Wm. Helphenstine & Co., although the same had before that been sold as well on the execution issued on the first judgment of Hyatt, Levings & Co., as on those issued on the judgments of the

complainants, and the property had been bought by appellees.

On Saturday night, and on Sunday, (December 22 and 23, 1877,) William Helphenstine of the firm of Wm. Helphenstine & Co., with a large force of laborers, secretly took up and removed the iron rails composing one mile in length of the middle portion of the track leading from the I and V. Railroad to the mine.

Under the laws of Indiana *real estate* could, by the debtor and by lienors, be redeemed from an execution sale by paying within twelve months after such sale, the purchase money with ten per cent interest.

During this redemption period an execution purchaser did not have, and could not obtain, the legal title to the property he had bought; and he was not entitled to the possession of the property he had purchased. The appellees, therefore, within this period, and after the track had been torn up as before stated, appealed to the equity side of the court below; and invoked its power to restrain the defendants from depriving them of that which they had bought as part of the realty and of which the defendants attempted to deprive them. The court granted an injunction enjoining the defendants from removing, seizing, wasting or selling on the execution the property detached from the track leading to the coal mine, and from in any manner wasting or injur-

ing any of the property purchased by the complainant at the execution sale.

Wm. Helphenstine & Co., and Hyatt, Levings & Co., in their several answers, claim that the sheriff's sale is not valid. For this claim they assign two reasons: one, the year 1876 having been leap year, and summons having been served on Friday, the 25th of February, when court commenced on the 6th of March, and by not counting the 29th of February as a day, there was not ten days' service, and for this reason the court had not jurisdiction of the persons, and that therefore the judgments are void; the other, that the property should not have been sold as real estate at the court house door, but as personal property in view.

Before the final hearing, the Supreme court of the State, in one of the cases, ruled the proposition that the judgments of March 7, 1876, are void, not well taken The court held not only that even if there was not ten days' service this would not make the judgment a nullity, but that the 29th day of February in leap year must be counted as a *day;* and that therefore summons had been, as required by statute, served ten days before the first day of the term of court.

Helphenstine vs. Bank, 65 Ind., 582; s. c. with comments 32 Am. Rep. 86.

On the final hearing was submitted an agreement as follows:

"It is agreed by the parties hereto that the "plaintiffs are entitled to a decree as prayed for, un- "less the property sold should have been sold as per- "sonal property, as provided for by the statutes of "the State of Indiana; that the Sheriff's sale was "made at the court house door, in the city of Vin- "cennes, in Knox county, and more than twelve miles "from the property. A copy of one execution and "the sheriff's return thereto shall be given in evidence, "and the others are dispensed with. It is further "agreed that either party may introduce any other "evidence tending to show that the property sold was "sold at the proper place or to the contrary."

This left for the Federal Circuit Court the question whether the Sheriff should have made the sale at the court house door as real estate is directed to be sold, or at some other place, and as personal property in view.

The appellants moved the court to so modify the decree as to strike out so much thereof "as enjoins the sheriff of Knox county from selling all the machinery, building, fixtures and improvements situate on the premises, held under the two Bunting leases read in evidence," for the reason, as alleged, that the interest of the defendants is personal property, and the execution sale is void because the sale was not made as personal property should be sold.

The coal minining company held the ground on which the tract was located, under several deeds as follows:

The Simonson deed (record 27 and 28), conveys the strip of ground along the west end of s w $\frac{1}{4}$ of sec. 22.

The Bunting deed (record 26 and 27,) conveys a strip of ground to Helphenstine & Co., for the purpose of the track through s e $\frac{1}{2}$ of s e $\frac{1}{4}$ of sec. 21; and the n $\frac{1}{2}$ of e $\frac{1}{2}$ of s e $\frac{1}{4}$ of sec. 21.

The Neal deed (record p. 31,) conveys the ground for the like purpose through s e $\frac{1}{4}$ of n e $\frac{1}{4}$ of sec. 21.

The Atkinson deed (record p. 30,) conveys the ground for the track through s w $\frac{1}{2}$ of n e $\frac{1}{4}$ of sec 21.

The Slinkard deed (record p 28 and 29,) conveys the ground for the track through the n w $\frac{1}{4}$ of the n e $\frac{1}{4}$ of sec. 21.

The Phillippi deed (record p. 29,) conveys the ground from the last named track to the I. & V. Railroad.

Some of these deeds have conditions, but these are not important in this litigation. The conveyances, undoubtedly conveyed a fee. The last named is a conveyance of the land itself so long as used as a railroad track. This use may last forever and the conveyance is therefore a free hold estate. Besides, no part of the track torn up was on the Phillippi land.

The diagram, (record between p. 26 & 27,) in connection with these deeds, shows that the conveyances just referred to convey the *ground* for the track, except the part south of the line between sections 22 and 27. This part of the track had been located under

a contract with Bunting for mining purposes, (record p. 32). This diagram, it was agreed, is correct except that "no part of the track to the coal mine was on section 28, but that the mine and all the shafts and mining machinery were on Bunting's land, on Sec. 2 , under the terms of the Bunting lease" before referred to.

In 1852 the Statutes of the State were revised; Indiana became a code State. In the citations to statutes we refer to the second volume of Davis, published in 1876. This contains the provisions, as far as statutes are concerned, on which the validity of the sheriff's sale depends.

The provisions of the code bearing on this subject are these:

"The following real estate shall be liable to all judgments and attachments, and to be sold on execution against the debtor owing the same, or for whose use the same is holden, viz:

"*First.* All lands of the judgment-debtor, whether in possession, reversion or remainder.

"*Second.* Lands fraudulently conveyed with intent to delay or defraud creditors.

"*Third.* All rights of redeeming mortgaged lands; also, all lands held by virtue of any land office certificate.

"*Fourth.* Lands, and any estate, or interest therein holden by any one in trust for, or to the use of another.

"*Fifth.* All chattels real of the judgment-debtor."—*Sect.* 526, *p.* 232.

"Real estate, taken by virtue of any execution, shall be sold at public auction at the door of the court house of the county in which the same is situated, and if the estate shall consist of several lots, tracts, and parcels, each shall be offered separately; and no more of any real estate shall be offered for sale than shall be necessary to satisfy the execution, unless the same is not susceptible of division."—*Sect.* 466, *p.* 217.

"The time and place of making sale of real estate, on execution, shall be publicly advertised by the sheriff, for at least twenty days successively, next before the day of sale, by posting up written or printed notices thereof, in three public places in the township in which the real estate is situated, and a like advertisement at the door of the court house of the county; and also by advertising the same, for three weeks successively, in a newspaper printed nearest to the real estate, if any such newspaper be printed within the jurisdiction of the sheriff: *Provided*, That if the publisher of such newspaper shall neglect or refuse to publish such notice when requested so to do by the sheriff, it shall be lawful for the sheriff to publish the same in any other newspaper published within his jurisdiction; or if there be no other such newspaper published in the county, the sheriff may dispense with the publication of such notice in a newspaper, and the land may be sold without such publication; and the sheriff shall in his

return of such writ, state the refusal of the publisher of such newspaper to publish the notice; which return shall have the same effect in evidence as the official returns of sheriffs in other cases."—*Sect.* 467, *p.* 217.

"*Be it enacted by the General Assembly of the State of Indiana*, That whenever, hereafter, any real property or any interest therein shall be sold on any execution or order of sale issued upon any judgment, decree or other judicial proceeding within this state, the owner thereof, his heirs, executors, administiators, or any mortgagee or judgment creditor having a lien upon the same may redeem such real property or interest therein, at any time within one year from the date of such sale by paying to the purchaser, his heirs or assigns, or the clerk of the court from which such execution or order of sale was issued for the use of said purchaser, his heirs or assigns, the purchase money, with interest thereon at the rate of ten per cent. per annum."—*Sect.* 1, *p.* 220.

"Any debt or thing in action, legally or equitably assignable, may be levied upon, when given up by the defendant, and sold on execution, in the same manner as other personal property."—*Sect.* 438, *p.* 208.

"Previous notice of the time and place of the sale of any personal property on execution, shall be given for ten days successively, by posting up written notices thereof in at least three of the most public places in the township where the sale is to be made."

Sect. 468, *p.* 218

"Personal property shall not be sold unless the same shall be present and subject to the view of those attending the sale, and it shall be sold at public auction in such lots and parcels as shall be calculated to bring the highest price."—*Sect.* 469, *p.* 218.

Section 469 requires that personal property shall, at the sale, be present and be subject to view. This class of property, not having a fixed location, the object of the section is to enable bidders to see on what they are bidding, and thus have it bring its fair value. In the sale of real estate and chattels real the same reason does not apply. These have fixed locality and persons intending to bid can inform themselves as to value.

The provision of this section can have application only to such personal property as can have *presence* and can be *viewed.* It cannot apply to such personal property as a "debt or thing in action, legally or equitably assignable," the sale of which, as personal property, is provided for in section 438. By parity of reason it cannot apply to a chattel real; this cannot be exposed to view. An estate for years is not the land which can be viewed but is only an *interest* in real property of which it possesses one quality,—immobility, which denominates it *real;* but wants the other—namely a sufficient legal indeterminate duration. It is a right to enjoy for a certain period, but is not the thing that can be seen or exposed to view.

A chattel real partakes of the character of both real and personal estate; of the former in so far as it is an interest in real property, and on account of its immobility; of the latter for want of a sufficient legal indeterminate duration. Partaking of the character of both suggests a ready reason why, by legislation, they should be put on the other side of the line. As is seen by the legislative enactments the notice of sale required, if treated as real property, is far better calculated to obtain bidders than if treated as personal property. It can hardly be, in view of this legislation, that it was intended that a long term of years on valuable property should be sold on ten days' notice posted up in three public places in the township in which the sale is to be made. For all purposes except the collection of debts the old division line may remain, but for this purpose it was proper that the legislature should, and we contend did, change the line of division so as to throw this ambiguous property on the side of real estate. Section 526 is found in the code of civil procedure which provides the mode for enforcing judgments; and this section enumerates *chattels real* as part of the *real estate* which shall be "liable to all judgments and attachments, and to be sold on execution against the debtor owning the same." And section 466 provides that real estate, which must mean real estate as defined by that act, shall be sold at the court house door.

In this connection we call attention to the case of Barr vs. Doe, 6 Blackford 335, which will probably be cited by the appellants as holding chattels real in this State to be personal property for the purpose of being levied on and sold on execution. No one questions the correctness of the view the court took as to the law at the time the decision was made. As appears from the opinion executions then issued by a justice of the peace could be levied on the goods and *chattels* of the debtor as his personal property. But in the revision of 1852, before referred to, a change was made in this respect, as well as in defining what shall be real estate for the purpose of being sold on execution. The revision of 1852 does not provide what may be sold on execution issued by a justice of the peace, except as indicated by a form for a *fi. fa.* prescribed by the legislature, which is as follows:

No. 4.

Fieri facias.

The state of Indiana, county of Clark, ss:

To any constable of Clark county:

Whereas, John Doe obtained judgment against Richard Roe, as appears of record; on a docket now in my possession, or fifteen dollars, with interest from the first day of January, 1852, together with five dollars for costs. You are therefore commanded to make the same, together with all accruing costs, by levy and sale of the goods of Richard Roe, and make return thereof within six months from date.

Dated this 20th January, 1852.

RICHARD STILES, *Justice.* [SEAL.]

Revision of 1876, *p.* 642.

It will be noticed that the command is to make the money by levy and sale of the *goods* of the debtor. The phrase *goods and Chattels*, found in all prior enactments on this subject, is changed to *goods*. This is in harmony with section 526, which classes *chattels real* as real estate.

It is hardly necessary to suggest that the word *goods* does not include chattels real.

Bouviers Law Dictionary.

The case of Barr vs. Doe, therefore is not adverse to the views of the appellees, but their position is consistent with the opinion expressed in that case. The legislation of 1852, by including in the section declaring *what real estate* shall be liable to execution, "*all chattels real of the judgment debtor;*" and by omitting these chattels in the form for executions to be issued by justices of the peace, shows that the intention was for the purpose of the collection of debts, to class these chattels as real estate.

"The estate or interest of the judgment debtor in any real estate shall not be sold on execution, until the rents and profits thereof, for a term not exceeding seven years, shall have been first offered for sale at public auction; but if the same shall not sell for a sum sufficient to satisfy the execution, then the *estate* or *interest* of the judgment debtor shall be sold by virtue of the execution.—*Section* 463, *p.* 215.

Here the sheriff must first offer for sale a term not to exceed seven years; and, when this cannot be

sold for sufficient for the payment of the debt, he offers the estate or the interest of the judgment debtor. The practice has not only been general but uniform, to offer this term at the court house door; and, if a sufficient bid is not received then at once to offer the estate and interest of the judgment debtor.

Should it be true that, as a general proposition, an interest in the land, not amounting to the ownership of the land itself, ought on execution be sold in view of the land and as personal property, the sheriff may still have done right in this case in selling all as an entirety. There was but one property composed of land and chattels real. The strip of ground on which the railroad track had been constructed belonged, with a small exception, to the judgment debtors. In this they had not a term for years, but they owned the ground itself. As part of the same property they had mining leases. The track without the mine may have been of no value and the mine without the track worthless. The sheriff had to use a reasonable discretion and he treated it as an entirety. He having adopted in good faith the manner of selling he did, the presumption is this was right. The only way, with a proper regard for the interest of all concerned, was to sell all either as real or as personal property. It will hardly be contended that the sheriff should have sold the fee as personal estate on ten days' notice posted up in three public places in the township. On the contrary, he did right in

pursuing the direction of the law which prescribes the mode of disposing of property of the higher character, and in considering the chattels as annexed thereto. In thus treating the matter no harm was done to any one; more extensive notice of sale was required to be given, than if the property had been sold as personal. The course pursued was therefore calculated to obtain a better price.

As before stated, the appellants moved the court to so modify the decree as to strike out so much thereof "as enjoins the sheriff of Knox county from selling all the machinery, building, fixtures and improvements situate on the premises, held under the two Bunting leases read in evidence because the same were personal property when levied upon under the several executions of the complainants, and said sale thereunder was void because the same were not sold as personal property, but as real property, and hence they acquired no title under said sale made at the court house door"—*Record p.* 24.

This motion is not based on the theory that leasehold should not be sold on execution at the court house door as real estate, but on the proposition that fixtures annexed by a tenant to the land should, on execution against him, be sold as chattels, separate from his estate in the land: that in this case the sheriff should have separated "the machinery, buildings, fixtures and improvements" from the

premises held under Bunting, and should have sold these as personal property distinct from the debtor's estate in the land. The appellees claim that when a tenant annexes fixtures to the land in which he has an estate for years, these fixtures became part of his estate, and that by a sale by him, or under legal process against him, of his leasehold the fixtures will pass.

"Ordinary trade or tenant fixtures, which are put up with the intention that they shall be removed by the tenant, (and so put up for a purpose, in one sense only temporary, and certainly not for the purpose of improving the reversionary interest of the landlord,) have always been considered as part of the land, though severable by the tenant In most, if not all, such cases, the reason why the articles are considered fixtures, is probably that indicated by Wood, V. C. in Boyd vs. Shorrock, that the tenant indicates by the mode in which he puts them up, that he regards them as attached to the property during his interest in the property."—*Ewell on fixtures*, 32.

The same author says, p. 275, et. seq:

"The general rule undoubtedly is, that all fixtures whether actually or constructively, annexed to the realty, pass by a conveyance or mortgage of the freehold, where there is nothing to indicate a contrary intention. And it makes no difference that the sale is by virtue of a legal process, as by sale

of the land on execution, the rule in each case being the same as in the case of a private sale. The rule is the same in the case of the conveyance or mortgage of a leasehold without mentioning the fixtures, which, though removable as against the landlord, pass, unless a contrary intention appear. In like manner tenant's fixtures, though removable by the tenant as against the landlord at the end of the term, pass as a part of the security by the deposit of a lease by way of equitable mortgage, although they are not mentioned in the memorandum of deposit."

The Supreme Court of Illinois, in a case involving this question uses the following language:

"Again, the house was annexed to and formed a part of the leasehold estate. It was not, of itself, a chattel, but it with the lease of the lot, formed a chattel real. Being part and parcel of the same thing, and not naturally divisible, it was irregular for the officer to levy on the house, without also levying on the lease. Unexplained, it must be presumed to be unauthorized. We are aware of no case, or any principle, which holds that houses may be severed from the fee, the freehold or other estate, by an officer acting under an execution. It could not be, that growing timber, fruit or ornamental trees, could be severed from the fee, by a levy and sale on an execution against the owner of the fee."

Conklin vs. Foster, 57 *Ills.*, 154.

One more matter we desire to call especial attention to. The sale under which appellees bought was made as well on the execution of Hyatt, Levings & Co. as on those of these appellees who became the purchasers at that sale; and each judgment creditor on whose execution the sale was made became entitled to the proceeds thereof according to his rights. And that it is not entirely equitable that after Hyatt, Levings & Co. had on their writ procured this sale, they should ignore their judgment on the pretended leap year question, and for that reason obtain another judgment for the cause of action for which their former judgment had been rendered, and then attempt to sell on this latter judgment what had before been sold for the payment of *their* debt as well as for the benefit of the debts of the appellees.

Should it, as a general proposition, be true, that chattels real under the laws of this State, ought to be sold in sight of the land, still the sheriff may have done right to make the sale in the manner and at the place he did. The matter in controversy is whether the sale under all the circumstances is valid. In this case there was but *one property*, composed of two items—land and chattels real. The strip of ground on which the railroad track had been constructed belonged to the execution defendants. In this they had not a term of years, but they owned the ground itself. As part of the same property they had mining leases or chattels real. The two could not be

separated. The track without the mine was worthless, and the mine without the track was of no value. The consequence was that all had to be treated and sold as an entirety. The only way, with a proper regard for the interests of all concerned, was to sell all either as personal or as real estate. It will hardly be contended that the sheriff should have sold the fee as personal estate on ten days' notice posted up in three public places in the township. On the contrary, he did right in pursuing the provisions of the law which prescribed the mode of disposing of property of the higher character, and in considering the chattels real as annexed thereto.

In thus treating the matter no harm was done to any one; notice was required and given more extensive than if the property had been sold as personal. The property was, therefore, by the course pursued, likely to bring a better price than it would have brought if the sale had been as personal.

The ground from which the rails, &c., were removed belonged to the judgment debtors in fee. It was one mile in the middle of the track leading from the mine to the I. & V. railroad. By inspecting the diagram it appears that no part of the track removed, (this being the middle mile), was in section twenty-seven. The part of the track in this section, as appears from the deeds, was the only part which had been located on leased ground.

No attempt is made to show that the sheriff did

not act prudently. Every presumption should therefore be in favor of the course he pursued. If under any condition of things he could sell the whole property as an entirety it must be presumed that this condition of things existed.

F. W. VIEHE,
Counsel for Appellee.

After the above was in type we received appellant's brief and we will reply to some of their positions.

The question is not, as stated by appellant's counsel, "whether the machinery, &c., in a certain coal mine in Knox county, Indiana, was real estate or personal property." The property sold by the sheriff consisted of land which the execution defendants owned in fee, and on which they had constructed a railroad track; and of estates for years for mining purposes, and, as part of these estates, of machinery, &c., annexed thereto. The stipulation (printed record, p. 26), is, "that the plaintiffs, (appellees), are entitled to a decree as prayed for, unless the property sold, (that is, the land on which the track had been constructed, the leaseholds and fixtures), should have been sold as personal property, as provided for by the statutes of the State of Indiana." Such a proposition as that the track should have been sold at the court house door and the leaseholds and

fixtures on the premises, seems not even to have been thought of.

Appellants' counsel in their brief, on page four, claim that the stipulation was that the complainants "were entitled to a decree unless the property in controversy, levied on in favor of Hyatt, Levings & Co., was 'personal property' and not 'real estate.'" We call the attention of the court to the fact that there is no stipulation as here stated, but it is as we have before quoted. The property referred to is not only that levied on by Hyatt, Levings & Co., but is all that had been sold by the sheriff as an entirety, and the question which arises from the stipulation is not whether the property is wholly real or personal, but at what place should the sale have been made.

Appellant's counsel, on page four of their brief, say that the court on the hearing "decided as matter of law that the interest of Helphenstine & Co., under the Bunting lease, at the date of the execution sale, was real estate, and that the machinery and the like at the mine at the time of the sale constituted part of the real estate." The record does not bear out this statement. All the court decided in this respect is that the sheriff's sale is valid.

It seems singular that appellants should say, (brief page four), that "it is unnecessary to inquire what estate Helphenstine & Co. had in that part of the railroad track lying between section twenty-seven (27) and Bicknell," when this was the very part of

the track torn up by Helphenstine and on the materials of which Hyatt, Levings & Co. levied their execution. The other part of the property they levied on constituted fixtures to leaseholds and the levy on them separate from the estate in the land was void. [Conklin v. Foster, supra.] If Hyatt, Levings & Co. cannot maintain the validity of their levy on the materials which had been torn up from the track, then their proceeding are entirely void. The levy on the other part of the property was simply an attempt to separate fixtures from an estate in land, and to sell these fixtures separate from the estate

It is true as stated by counsel for appellants that if this leasehold was, for the purpose of the collection of debts, to be sold as real estate, then the owner was, under the redemption law, entitled to keep possession for one year after the sale; but it is also true that if he failed to redeem he became liable to the purchaser for the "reasonable rents and profits." In this connection it may be noticed that the right to redeem is not confined to real property, but extends to any interest therein. The argument drawn from this statute by the other side does not seem to have much force. It may be noticed that the redemption law in providing for redeeming real property *or any interest therein* speaks of paying the redemption money to the clerk of the court from which the execution issued. A justice of the peace has no clerk.

Section 463, page 215, provides that "the estate

or interest of the judgment debtor in any real estate shall not be sold on execution, until the rents and profits thereof, for a term not exceeding seven years, shall have been first offered for sale at public auction: but if the same shall not sell for a sum sufficient to satisfy the execution, then the estate or *interest* of the judgment debtor shall be sold by virtue of the execution." And section 465 provides that in such case the "*sheriff* shall execute a lease to the purchaser for the term sold." *Constable*, the ministerial officer in the court of justices of the peace, is not named. A chattel real is an *interest* in land, and is therefore liable to be redeemed from execution sale. Where a sheriff had sold a term not exceeding seven years it seems to have been conceded by court and counsel that the right to redeem applied.

Johnson vs. Briscoe, 92 *Ind.*, 367.

There may not be entire harmony between the provisions directing the manner of disposing of property on execution and the redemption law. The former was passed in 1852, and contemplated that a purchaser should, at once, have possession of what he buys. The redemption law was passed in 1861, and permits the owner to retain possession for one year, but makes him liable for rents and profits if he fails to redeem.

In quoting from the code a provision for its interpretation appellant's do not give all that has a bearing on this case. The section is this: "In the

construction of this act, the following rules shall be observed, *when consistent with the context*: * * * 'the word land, and the phrases real estate, and real property, includes lands, tenements and hereditaments. The phrase personal property includes goods, chattels, evidences of debt, and things in action." The very thing we contend for is that the *context* shows that chattels real ought, on execution, be sold as real estate.

We have not at hand the statutes of Michigan, or the case of Buhl vs. Renyan decided by the Supreme Court of that State, and from which appellants quote in their brief on pages 12 and 13. It seems to us from the quotation that the redemption law of that State must be quite different from ours. That seems to apply only to real estate, as these words are used in a common law sense; whereas the statute of Indiana provides for the redemption of "any real property or *any interest therein*." The code of 1852 having placed chattels real on a level with real property only for the purpose of sales on execution, and having left, by definition of terms where the context does not indicate otherwise, the old division of property, the words *real property* in the redemption law of 1861, (which is the first on this subject), would have been understood in their general sense. The Legislature therefore added the words *or any interest therein*. Another difference is apparent from the quotation. The court speaks of terms for short

periods where a sale would be entirely nullified by a fifteen months period of redemption. In Indiana, if the debtor redeems, the purchaser is entitled to his money with interest; if there is no redemption he is entitled to the rents and profits. The court also speaks of the danger of a leasehold being forfeited during the period allowed for redemption. This danger applies fully as well to a case where the debtor has a conditional fee. In such case a debtor may do, while he has a right to redeem and is in effect the owner of the land, the very act by which the estate becomes forfeited. It will not, for that reason, be said that the sale should not have been made as of real estate, or that the property should not be subject to redemption.

The appellants cite a number of authorities to the effect that estates for years, (when no statute intervenes,) are to be treated as personal property. This position we do not contend against. They do not, however, cite a single instance in which a term for years, since the revision of 1852, has been sold on execution as personal property; and we feel confident none can be found. They call attention to the treatise for the guidance of justices of the peace, written by the late Judge McDonald. This book was written shortly after the present code had been adopted. The author bases his statement referred to on common law authority, and not on the provisions of the code. The statutory provisions are not even alluded to. Counsel

for appellants speak of a revision of this book. As far as *this matter* is concerned, and we may say generally as far as relates to the text and to the forms, the revision is merely a reprint. The forms in the old text books are adopted; but the legislation, and the forms prescribed by the Legislature of 1852, are not even mentioned.

With one more proposition we will close this argument. Appellants in their brief, page 14, advance the position that the only purpose of section 526, before quoted, was to declare what interest in land should be subject to execution. The statute of frauds has always made all the property enumerated in this section, which was not otherwise liable, subject to execution. The section in the revision which immediately preceded that of 1852, is section one, page 453, in the revision of 1843. The section of 1843, is, that "when, by any law of this State, real estate is authorized or directed to be sold by virtue of any execution, the same shall be construed to mean and include all the lands, &c., of the judgmet debtor, &c." Then come the other three items in effect the same as in section 526 in the revsion of 1852, but in the latter revision an item numbered five is added and is this: "all chattels real of the judgment debtor.

F. W. VIEHE,
Counsel for Appellees.

Counsel for appellants, in their reply brief, call attention to the fact that Johnson vs. Briscoe, cited by us on page 24, was decided under the redemption law of 1881; and that under the revision of 1852, on a sale of rents and profits, the sheriff immediately executed a lease. The statement thus made is true. But it is also true that the redemption law of 1861—the first in this State, and which was in force when the sale, the validity of which is now in controversy, was made—makes provisions, as far as this case is concerned, similar to those in the act of 1881. Any *interest* in real property sold on execution may be redeemed; the purchase money with interest must be paid to the purchaser, his heirs or assigns, or to the clerk of the court—not to a justice of the peace, who has no clerk. And this act further provides that "The judgment-debtor shall be entitled to the possession of the premises for one year after the sale," &c. So we claim, that for the purposes of this case, Johnson vs. Briscoe is in point. Each act modified the act of 1852.

F. W. VIEHE,
For Appellees.